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14 WAL-MART STORES, INC.

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

AFROUZ NIKMANESH, ELVIS
ATENCIO, ANNA NGUYEN, AND
EFFIE SPENTZOS, on behalf of
themselves, the general public, and all
others similarly situated,

Plaintiffs,

v.

WAL-MART STORES, INC., a
Delaware corporation, and WAL-MART
ASSOCIATES, INC., a Delaware
corporation, and DOES 1 through 10,
inclusive,

Defendants.

Civil Action No. 8:15-CV-00202-AG-JCG

**DECLARATION OF JOHN YSLAS
IN SUPPORT OF DEFENDANTS'
WAL-MART STORES, INC.'S
AND WAL-MART ASSOCIATES,
INC.'S OPPOSITION FOR
CONDITIONAL CERTIFICATION
AND FOR AN ORDER
CIRCULATING NOTICE
PURSUANT TO 29 U.S.C. §216(B)**

Date: August 17, 2015
Time: 10:00 a.m.
Courtroom: 10D

DECLARATION OF JOHN YSLAS

I, John Yslas, based on my personal knowledge of the facts stated herein, hereby declare that the following facts are true and correct under penalty of perjury.

1. I am an attorney at law duly licensed to practice in the State of California and before this Court. I am a Partner at the law firm of Norton Rose Fulbright US LLP, and I am primarily responsible for the representation of Defendant Wal-Mart Stores, Inc. and Wal-Mart Associates, Inc. ("Wal-Mart"). I have personal knowledge of the facts recited in this declaration and, if called as a witness, I could and would competently testify to them.

2. This action was originally filed in December 2014. Thus far, Plaintiffs have propounded no formal discovery or taken any depositions.

3. Attached hereto as Exhibit A is a true and correct copy of a chart summarizing deposition testimony of the four named plaintiffs (Afrouz Nikmanesh, Anna Nguyen, Elvis Atencio, and Effie Spentzos) and five declarants (Michael Denham, Brian Nguyen, Khanh Nguyen, Monita Trinh and Khawala Abuelidja) regarding some key differences among their testimony. They excerpts of this deposition testimony can be found in Exhibits C-K attached here.

4. Attached hereto as Exhibit B is a true and correct copy of a chart summarizing deposition testimony of the four named plaintiffs (Afrouz Nikmanesh, Anna Nguyen, Elvis Atencio, and Effie Spentzos) and five declarants (Michael Denham, Brian Nguyen, Khanh Nguyen, Monica Trinh and Khawala Abuelidja) regarding some key admissions in their testimony. They excerpts of this deposition testimony can be found in Exhibits C-L attached here.

5. Attached hereto as Exhibit C is a true and correct copy of excerpts of the deposition of plaintiff Afrouz Nikmanesh.

6. Attached hereto as Exhibit D is a true and correct copy of excerpts of the deposition of plaintiff Anna Nguyen.

7. Attached hereto as Exhibit E is a true and correct copy of excerpts of

1 the deposition of plaintiff Elvis Atencio.

2 8. Attached hereto as Exhibit F is a true and correct copy of excerpts of
3 the deposition of plaintiff Effie Spentzos.

4 9. Attached hereto as Exhibit G is a true and correct copy of excerpts of
5 the deposition of declarant Michael Denham.

6 10. Attached hereto as Exhibit H is a true and correct copy of excerpts of
7 the deposition of declarant Brian Nguyen.

8 11. Attached hereto as Exhibit I is a true and correct copy of excerpts of
9 the deposition of declarant Khanh Nguyen.

10 12. Attached hereto as Exhibit J is a true and correct copy of excerpts of
11 the deposition of declarant Monica Trinh.

12 13. Attached hereto as Exhibit K is a true and correct copy of excerpts of
13 the deposition of declarant Khawala Abuelhija.

14 I declare under penalty of perjury under the laws of California and the United
15 States that the foregoing is true and correct. Executed this 20th day of July 2015, in
16 Los Angeles, California.

17
18 /s/ John Yslas

John Yslas

PROOF OF SERVICE

I, Diana Cardenas, declare:

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 555 South Flower Street, Forty-First Floor, Los Angeles, California 90071.

On July 20, 2015, I electronically filed the attached document(s):

DECLARATION OF JOHN YSLAS IN SUPPORT OF DEFENDANTS' WAL-MART STORES, INC.'S AND WAL-MART ASSOCIATES, INC.'S OPPOSITION FOR CONDITIONAL CERTIFICATION AND FOR AN ORDER CIRCULATING NOTICE PURSUANT TO 29 U.S.C. §216(B)

with the Clerk of the court using the CM/ECF system which will then send a notification of such filing to the following:

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Attorneys for Plaintiffs

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 20, 2015, at Los Angeles, California.

/s/ Diana Cardenas
Diana Cardenas

EXHIBIT A

EXHIBIT A: CHART SUMMARIZING SOME DIFFERENCES:

1. What constitutes the written policy mandating taking of the APhA Course:
Plaintiff Nikmanesh stated the PAID Toolkit plus training module constitutes the written policy. (Nikmanesh Depo., 72: 1-10; 75:8-11).
Plaintiff A. Nguyen stated that job postings ¹ constitute the written policy. (A. Nguyen Depo., 75:6-77:11).
Plaintiff Spentzos stated no document constitutes a written policy. (Spentzos Depo., 71:19-23).
Plaintiff Atencio stated the PAID toolkit (but not training module) constitutes written policy, but admitted that nowhere in the PAID toolkit does it state that certification or training course was mandatory. (Atencio Depo., 95:11-16; 64:10-23).
Declarant Denham testified that he received an email that expressly told him that taking the course was voluntary, and the directive from his supervisor was contrary to the voluntary policy he understood. (Denham Depo., 42:14-43:12).
Declarant B. Nguyen testified there were no documents constituting a mandatory policy. (B. Nguyen Depo., 37:10-18).
Declarant K. Nguyen identified no documents constituting a mandatory policy. (K. Nguyen Depo., 25:20-25).
Declarant Trinh identified no policy communicating mandatory certification. (Trinh Depo., 94:6-10).
Declarant Abuelhija admitted no knowledge of any document indicating certification was mandatory. (Abuelhija Depo., 46:16-25).

¹ As noted below, some Plaintiffs and declarants admitted the job postings' "preferable" indication regarding immunization certification does not even constitute evidence that certification was mandatory for new hires, let alone a written "policy" constituting mandatory nature of taking course. (*See e.g.*, Nikmanesh Depo., 137:21-138:11; *see also* A. Nguyen Depo., 75:6-77:11 (acknowledging that her interpretation that a "preferred" qualification is a "mandatory" qualification is purely her own opinion)).

2. Statements causing belief mandatory, and limited authority of speaker:

Plaintiff Nikmanesh identified the PAID Toolkit (Nikmanesh Depo., 74:5-7); and statements from management limited to two individuals (Nikmanesh Depo., 91:19-92:1). Nikmanesh has no knowledge of management communications beyond direct supervisors and admitted those supervisors had limited authority over only a few stores. (Nikmanesh Depo., 27:15-20; 28:21-29:3; 34:5-11; 35:10-15; 37:14-19; 39:10-15; 97:25-98:6).

Plaintiff A. Nguyen bases her opinion on statements made by one market manager in Southern California and admits to no knowledge of communication beyond that manager or outside the region. A. Nguyen also stated supervisor's limited authority to 24 stores. (A. Nguyen Depo., 28:22-24; 30:22-31:6; 84:17-87:2; 98:1-3).

Plaintiff Spentzos identified the PAID Toolkit (Spentzos Depo., 72:14-19) and statements from one supervisor (Spentzos Depo., 81:6-11). Spentzos has no knowledge of other communications from management/leadership about course being mandatory and acknowledged the limited authority of supervisors over distinct territories. (Spentzos Depo., 33:11-34:1; 35:15-21; 82:1-17; 83:21-25).

Plaintiff Atencio's belief that the training course was mandatory stems solely from the existence of the PAID toolkit, but admits it does not state mandatory. Atencio also admitted that managers or supervisors had limited authority over only a few stores. (Atencio Depo., 20:22-25; 31:4-23; 37:21-24; 95:11-16; 64:10-23).

Declarant Denham admitted he had no knowledge of the training course's implementation, or the workings of pharmacies outside his own region and that his managers had limited authority. (Denham Depo., 17:23-18:1; 18:2-15; 19:20-25; 30:10-31:9).

Declarant B. Nguyen testified that his opinion that the training course was mandatory came solely from emails from his supervisor, and he had no knowledge of how that information was transmitted to her. B. Nguyen admitted managers' authority was limited to only 10-15 stores (B. Nguyen Depo., 16:5-7; 36:20-24; 42:13-24).

Declarant K. Nguyen testified the basis of her knowledge was based on a statement from another pharmacist and an email. She also testified that her manager had limited authority over only a few stores in Southern California. (K. Nguyen Depo., 14:10-22; 17:11-14; 20:6-9; 22:2-22; 28:7-10; 33:21-34:1).

Declarant Trinh stated she believed the course was mandatory due to some emails sent by managers. (Trinh Depo., 19:14-16; 56:4-20). She also admitted her manager had limited authority. (Trinh Depo., 19:14-19).

Declarant Abuelhija based her belief on emails from Dabney and a conversation with a Sam's Club pharmacist. Abuelhija also admitted her managers' authority was limited to only a few stores. (Abuelhija Depo., 22:18-20; 23:6-9; 46:6-11).

3. Job postings or description indications of “preferable” indicating evidence that taking course was mandatory:

Plaintiff Nikmanesh testified that preferred qualification meant it was a desirable qualification. (Nikmanesh Depo., 137:21-138:11).

Plaintiff A. Nguyen admitted that the postings indicated certification was “preferred” and her conclusion that preferred meant “mandatory” was her own opinion and was not based on concrete fact. (A. Nguyen Depo, 75:6-77:11).

Plaintiff Spentzos admitted that the word “preferable” (including for a job posting for position she applied for) does not mean mandatory. (Spentzos Depo., 44:11-45:15). Spentzos also testified she was never aware of job postings making certification a “minimum” qualification (Spentzos Depo., 118:10-16).

Declarant Denham admitted that the word “preferable” does not mean mandatory, so that job posting does not indicate taking course is mandatory. (Denham Depo., 73:2-75:5).

Declarant B. Nguyen admitted that the word “preferable” does not mean mandatory, so that job posting and job descriptions do not indicate taking course is mandatory. (B. Nguyen depo., 46:1-47:5).

EXHIBIT B

**EXHIBIT B: CHART SUMMARIZING SOME EXAMPLES OF KEY ADMISSIONS
(APART FROM LACK OF EVIDENCE PROFFERED)**

1. Not told reduced hours or transfer (per paragraph 26.i. of SAC – and contrary to Court order denying motion to strike and permitting Second Amended Complaint to proceed)

Plaintiff Nikmanesh admitted that she was not directly told she would be transferred or have hours reduced if did not take the course. (Nikmanesh depo., 121:10-17).

Plaintiff A. Nguyen admitted that she was not she was not directly told she would be transferred or have hours reduced if did not take the course. (A. Nguyen depo., 88:15-25).

Plaintiff Spentzos admitted that she was not she was not directly told she would be transferred or have hours reduced if did not take the course. (Spentzos depo., 81:12-25).

Plaintiff Atencio testified that his individual market manager supervisor used the words in paragraph 12-13 of his declaration that “priority in hours” would be given if he took the course, but cannot recall if his supervisor used exact words that hours would be reduced (Atencio Depo., 108:3-110:1). He also testified that his supervisor did not state that if he did not take the course he would be transferred. (Atencio Depo., 110:2-17).

Declarant Denham admitted that he was not directly told he would be transferred or have hours reduced if did not take the course. (Denham Depo., 59:8-25; 92:7-12).

Declarant B. Nguyen admitted that he was not directly told he would be transferred or have hours reduced if did not take the course. (B. Nguyen Depo., 52:1-8; 53:1-5).

Declarant K. Nguyen testified that her individual supervisor stated she better take the course or she would be removed (but he did not specifically state words would have hours reduced or transferred) (K. Nguyen Depo., 36:9-38:24). But in deposition K. Nguyen then contradicted her sworn declaration at ¶9, expressly testifying that her supervisor never in fact told her that all pharmacists had to be immunization certified. (K. Nguyen Depo., 26:21-27:9).

Declarant Trinh stated she had never been told she would receive priority for being certified or not certified, also never told would be transferred or lose hours. (Trinh Depo., 97:18-98:2; 111:9-12).

Declarant Abuelhija testified she was never told she would be terminated or lose hours if she was not certified. (Abuelhija Depo., 48:24-49:6).

2. No idea of who authored PAID Toolkit, job descriptions, job postings, or intent of any of these documents to demonstrate mandatory, and no idea of who, how, where the APhA Course was rolled out or intentions of mandatory.

Plaintiff Nikmanesh could not identify origin of most of her exhibits, including the PAID toolkit. (Nikmanesh Depo., 74:5-7; 80:25-81:3; 134:20-135:3; 141:4-7).

Plaintiff A. Nguyen admitted not having any knowledge of the origins of the PAID toolkit, Standard Operating Procedures, or job postings. (A. Nguyen Depo., 107:14-108:1; 121:19-25).

Plaintiff Spentzos admitted she did not know the origins, authors of, or intent behind key exhibits. (Spentzos Depo., 67:3-18; 103:14-19; 105:6-12; 108:4-11).

Plaintiff Atencio admitted he did not know the origins, authors of, or intent behind key exhibits. (62:5-11; 104:25-105:6; 105:7-9; 113:15-22; 125:19-25).

Declarant Denham stated that he had no idea how the certification initiative was rolled out, who controlled it, or how it happened in other parts of the country. (Denham Depo., 75:17-76:7; 77:7-21).

Declarant B. Nguyen testified he had never spoken to anyone in management other than Fischer about the training course, and he had no idea how the program was implemented beyond what Fischer told him. Declarant also testified he had no knowledge of who prepared documents like the PAID toolkit or job postings. (B. Nguyen Depo., 21:5-23; 30:23-31:23; 34:10-24; 42:13-24; 48:7-20).

3. Lack of evidence of uniform practice:

Plaintiff Nikmanesh admitted that her only evidence of any policy was the PAID toolkit, that it did not state the training course was mandatory, and that she has no idea whether other pharmacists also interpreted the PAID toolkit as indicating the course was mandatory because there was no official, uniform policy. (Nikmanesh Depo., 75:12-76:9).

Plaintiff A. Nguyen admitted her knowledge was limited to pharmacists she personally knows or has spoken to in Southern California, has no knowledge of state or nationwide practices. (A. Nguyen Depo., 82:23-83:14).

Plaintiff Spentzos testified based on her "total experience" (an expression that repeatedly infected her wider speculation about Wal-Mart's practices) that 99% of pharmacists are immunization certified – a conclusion based on no facts and no data, and which is flat out wrong. (Spentzos Depo., 62:9-63:20).

Plaintiff Atencio admitted he had no knowledge of any transmission of information from upper management to supervisors, and that knowledge was limited to what he himself was told. (Atencio Depo., 104:25-105:6; 105:7-9).

Declarant Denham noted that decisions about whether immunization certification was required would be made by each market manager across the country (Denham Depo., 72:9-21). Denham also admitted he never spoke to anyone from Walmart management, except his

direct manager, about the training course. (Denham Depo., 29:1-18).
Declarant B. Nguyen admitted no knowledge of any uniform practice. (B. Nguyen Depo., 48:24-49:8).
Declarant K. Nguyen testified she had no knowledge of any pharmacy practices outside her own store and she had no idea who might have communicated about the certification course to her supervisors. (K. Nguyen Depo., 24:15-18; 39:15-20).
Declarant Trinh testified her knowledge is limited to two markets in Southern California. (Trinh Depo., 65:25-67:10).
Declarant Abuelhija has no knowledge of practices outside Southern California. (Abuelhija Depo., 47:1-5).

4. If received continuing education (“CE”) credit toward maintaining license (relevant to special circumstances exception under 29 CFR 785.31):

Plaintiff Nikmanesh received CE credit. (Nikmanesh Depo. 114:12).
Plaintiff A. Nguyen admitted she received CE credit, a “benefit.” (A. Nguyen Depo. 78:15-80:15).
Plaintiff Spentzos received CE credit. (Spentzos Depo., 100:10-11).
Plaintiff Atencio received CE credit. (Atencio Depo., 101:10-24).
Declarant B. Nguyen received CE credit. (B. Nguyen Depo., 56:16-24).
Declarant K. Nguyen received CE credit. (K. Nguyen Depo., 35:13-19).
Declarant Trinh received CE credit. (Trinh Depo., 71:23-25).
Declarant Abuelhija received CE credit. (49:24-50:1).

5. No Minimum wage or overtime for class members (and no uniform evidence submitted of such in any event):

Plaintiff Spentzos admitted that there were part-time employees working less than 40 hours a week in pharmacies, but that she had no way to know how many pharmacists would have been less than full-time, and thus not eligible for overtime hours at all (Spentzos Depo., 96:15-97:21).
Plaintiff Atencio admitted that some pharmacy employees are part-time and could work as little as one day a week, thus not being eligible for overtime for training course time at all (Atencio Depo., 70:3-20).
Declarant Denham agreed that it was possible for someone to complete the training course

without going over 40 hours in a week (Denham Depo., 86:20-87:13).

Declarant Trinh stated it was possible that pharmacists work less than 40 hours a week (Trinh Depo., 16:1-20).

Declarant Abuelhija has worked only two days a week almost exclusively since 2010 and thus would not have worked any overtime in the week she completed training. (Abuelhija Depo., 16:1-21).

EXHIBIT C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA — SOUTHERN DIVISION

AFROUZ NIKMANESH, ELVIS	)	CASE NO.:
ATENCIO, ANNA NGUYEN, AND	)	8:15-cv-00202-AG-JCG
EFFIE SPENTZOS, on behalf of)	
themselves, the general	)	CERTIFIED COPY
public, and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
WAL-MART STORES, INC., a)	
Delaware corporation, and)	
WAL-MART ASSOCIATES, INC., a)	
Delaware corporation, and)	
DOES 1 through 10, inclusive,)	
)	
Defendants.)	
)	

VIDEO DEPOSITION OF AFROUZ NIKMANESH
Tuesday, June 23, 2015
Los Angeles, California

Reported By:
Jan M. Roper, RPR,
CSR No. 5705
File No.: 150623JR

1

1 were?

2 A. Some of them, yes.

3 Q. Which were they?

4 A. Laguna Hills, Santa Ana, Rancho Santa
5 Margarita, San Clemente, the other Irvine store, I
6 believe Buena Park. That's all I can remember at this
7 point.

8 Q. When you say Mr. Dukes was a district
9 manager, is that term the same as a market manager?

10 A. Yes.

11 Q. You say you know some of the stores that
12 Mr. Dukes oversaw.

13 Do you know all of them?

14 A. No, I can't recall.

15 Q. Mr. Dukes' authority was limited to those 12
16 stores, though; right?

17 A. I believe it was 12 stores. It was about 12
18 stores.

19 Q. Approximately 12 stores?

20 A. Yes.

21 Q. And Mr. Dukes' authority was limited to those
22 approximate 12 stores; right?

23 MR. EPSTEIN: Objection to the extent that --
24 lack of foundation and possible speculation.

25 But you can answer it. If you know, you can

1 answer it.

2 THE WITNESS: I just know approximately how
3 many stores he oversaw. That's about it.

4 BY MR. YSLAS:

5 Q. Okay. And those stores that he oversaw, that
6 was the limit of his authority; right?

7 MR. EPSTEIN: Same objection.

8 But you can answer if you know.

9 THE WITNESS: I would assume so.

10 BY MR. YSLAS:

11 Q. Do you know who Mr. Dukes reported to?

12 A. Anthony Chung.

13 Q. And what was Mr. Chung's title?

14 A. He was regional manager.

15 Q. And what region did Mr. Chung oversee?

16 A. Southern California.

17 Q. Do you know approximately how many stores?

18 A. No.

19 Q. No?

20 A. No.

21 Q. Mr. Chung's authority was limited to his
22 supervision of those stores in Southern California;
23 correct?

24 MR. EPSTEIN: Objection. Lacks foundation.
25 Calls for speculation.

1 You can answer if you know.

2 THE WITNESS: Again, I would assume so, but
3 it's just an assumption.

4 BY MR. YSLAS:

5 Q. Okay. And as we sit here today, you don't
6 know the scope of Mr. Chung's authority; is that your
7 testimony?

8 A. Yes.

9 Q. But you assume it was a -- limited to the
10 stores in Southern California that he oversaw; right?

11 A. Yes.

12 Q. Okay. Do you know who Mr. Chung reported to?

13 A. At some point, it was Mr. Warren Moore.

14 Q. And who was Mr. Moore's -- sorry. What was
15 Mr. Moore's title?

16 A. Divisional manager.

17 Q. And do you know what division Mr. Moore
18 oversaw?

19 A. No.

20 Q. Have you ever spoken to Mr. Moore?

21 A. Yes.

22 Q. How many occasions?

23 MR. EPSTEIN: By "spoken," do you mean not --
24 not e-mails but personal communication?

25 MR. YSLAS: You can just state an objection,

1 that right?

2 A. No.

3 Q. Is that right?

4 A. Oh, yes.

5 Q. Okay. So Ms. Fisher's authority was limited
6 to the 12 stores that she took over for Mr. Dukes and
7 the other stores she was supervising; right?

8 MR. EPSTEIN: Objection to the extent it
9 lacks foundation. Calls for speculation.

10 You can answer if you know.

11 THE WITNESS: I believe so.

12 BY MR. YSLAS:

13 Q. Okay. You believe so, but you don't know
14 because you don't know the full scope of her
15 authority; is that right?

16 A. Correct.

17 Q. Do you have any reason to believe her
18 authority was extended beyond the stores she
19 supervised?

20 A. I wouldn't know.

21 Q. Okay. Do you have any reason to believe that
22 it was?

23 A. No.

24 Q. Okay. Ms. Fisher took over in May 2013. Who
25 did she report to?

1 A. Mr. Chung.

2 Q. How long was Ms. Fisher your direct
3 supervisor as market manager?

4 A. Up until about February of 2014.

5 Q. From that period of time, then, Ms. Fisher
6 supervised you as market manager.

7 Did her reporting relationship ever change to
8 somebody other than Mr. Chung?

9 A. I don't believe so.

10 Q. And Mr. Chung was the regional manager for
11 Southern California; right?

12 A. Correct.

13 Q. And his authority was limited to the region
14 he oversaw, which was Southern California; correct?

15 A. I would assume so.

16 MR. EPSTEIN: Same objection as previously as
17 to lack of foundation. Calls for speculation.

18 But if you know, you can answer it.

19 THE WITNESS: I assume so.

20 BY MR. YSLAS:

21 Q. Okay. You assume so, but you don't know the
22 extent of his authority; is that right?

23 A. No.

24 Q. Is that correct?

25 A. I mean yes, that's correct.

1 clean answer here just because we talked over each
2 other a little bit. And as I -- as I said earlier,
3 sometimes I may do this.

4 Ms. Dabney oversaw approximately 12 stores in
5 California; right?

6 A. Correct.

7 Q. Okay. And those are the approximately same
8 12 stores that you mentioned earlier that Mr. Dukes
9 and Ms. Fisher oversaw, which were Laguna Hills,
10 Santa Ana, Rancho Santa Margarita, the other Irvine
11 store, Buena Park, and a few others you can't
12 remember; right?

13 A. Correct.

14 Q. And Ms. Dabney's authority was limited to
15 those approximate 12 stores; right?

16 MR. EPSTEIN: Same objection based on
17 foundation and speculation.

18 But if you know, you can answer it.

19 THE WITNESS: I believe so.

20 BY MR. YSLAS:

21 Q. And Ms. Dabney supervised you from
22 February 2014 until the end of your employment in
23 September 2014?

24 A. Correct.

25 Q. And who did Ms. Dabney report to?

1 BY MR. YSLAS:

2 Q. Okay. Ms. Bhatt was the regional manager;
3 right?

4 A. Correct.

5 Q. That Ms. Dabney reported to; right?

6 A. Correct.

7 Q. And do you know what region or stores
8 Ms. Bhatt oversaw?

9 A. The Southern California region.

10 Q. And Ms. Bhatt's authority was limited to
11 Southern California; correct?

12 MR. EPSTEIN: Objection. Lacks foundation.
13 Calls for speculation.

14 But you may answer if you know.

15 THE WITNESS: Again, I believe so.

16 BY MR. YSLAS:

17 Q. When you say you "believe so," you don't know
18 the full authority of Ms. Bhatt; is that right?

19 A. Correct.

20 Q. Did you ever speak to Ms. Bhatt about the
21 immunization training course?

22 MR. EPSTEIN: Objection to the word "speak"
23 as being vague and ambiguous.

24 Do you understand the question?

25 THE WITNESS: Speaking? I did have a phone

1 A. Not to my recollection.

2 Q. And when I say "discussed," I mean did you
3 ever discuss it in an e-mail or on the phone or in
4 person with Mr. Beahm, whether or not taking the
5 immunization training course was voluntary?

6 A. Not to the best of my recollection.

7 Q. So Mr. Beahm never told you that taking the
8 immunization training course was mandatory; correct?

9 A. Correct.

10 Q. Mr. Beahm never told you that taking the
11 immunization training course was voluntary; correct?

12 A. Correct.

13 Q. Because you didn't discuss it with him one
14 way or the other; is that correct?

15 A. Not to the best of my recollection.

16 Q. Okay. And who did Mr. Beahm report to?

17 A. I don't recall. Dr. John.

18 Q. Is John the first or last name?

19 A. Well, it was his first name, but his last
20 name was a little bit difficult to pronounce, so he
21 was referred to as Dr. John.

22 Q. Do you remember anything phonetically about
23 Dr. John's last name?

24 A. No.

25 Q. Have you ever spoken or communicated in any

1 Q. Who did Dr. John report to?

2 A. I have no idea.

3 MR. EPSTEIN: Mr. Walton.

4 MR. YSLAS: The videographer has signaled to
5 me that we're running out of tape. So I think now is
6 a good time to take a break to change the tape.

7 THE VIDEOGRAPHER: The time is 11:00 a.m.

8 This is the end of Tape 1. We are off the record.

9 (Brief recess.)

10 THE VIDEOGRAPHER: Back on the record. The
11 time is 11:13 a.m. This is the beginning of Tape 2.

12 BY MR. YSLAS:

13 Q. From January 1, 2013, forward, other than
14 Mr. Moore and Mr. Patel, do you know the names of any
15 other divisional managers?

16 A. Not that I can recall.

17 Q. Did you ever have any communications with any
18 divisional managers from January 1, 2013, forward
19 other than Mr. Moore and Mr. Patel?

20 A. Not that I can recall.

21 Q. From January 1, 2013, forward, do you know
22 how many divisional managers there were?

23 A. To the best of my recollection, two.

24 Q. I'm sorry. I'm asking for the entire United
25 States.

1 A. Oh, I'm sorry. I have no idea. I thought
2 you were talking about Southern California.

3 Q. Well, let me try the questioning again to
4 make sure we're on the same page.

5 From January 1, 2013, forward, do you know
6 the names of any other divisional managers that were
7 divisional managers during that time frame in the
8 United States other than Mr. Moore and Mr. Patel?

9 A. No.

10 Q. January 1, 2013, forward, other than
11 Mr. Moore and Mr. Patel, did you have any
12 communications with any divisional managers other than
13 those two?

14 A. Not that I recall.

15 Q. So from January 1, 2013, forward, you never
16 had any conversation with any divisional manager about
17 the voluntariness of the immunization training course;
18 correct?

19 A. Correct.

20 Q. From January 1, 2013, forward, you never had
21 any conversation with any regional manager about
22 whether the immunization training course was
23 voluntary; correct?

24 A. Except for Mr. Patel regarding the 12-hour
25 study.

1 Q. Mr. Patel was a divisional manager; right?

2 A. Divisional, yes.

3 Q. Okay. So you -- you had the one conversation
4 with Mr. Patel regarding the immunization training
5 course that you've already testified?

6 A. Yes.

7 Q. Okay. But in that conversation, as you've
8 already testified, you did not discuss whether the
9 training course was voluntary; right?

10 A. I don't believe so.

11 Q. Okay. So now I'm moving from divisional
12 managers to regional managers.

13 Are you with me?

14 A. Okay.

15 Q. Okay. So from January 1, 2013, forward, you
16 never had any conversation with any regional manager
17 about the immunization training course; correct?

18 A. Like I said, with Anthony Chung through
19 Stephanie Fisher. And I'm not quite sure if -- during
20 my conversation with Ami Bhatt, if I mentioned it or
21 not.

22 Q. Okay. Other than those two, Mr. Chung and
23 Ms. Bhatt, which you already testified to about, you
24 never had a conversation with any other regional
25 managers about the immunization training course;

1 correct?

2 A. Not to the best of my recollection.

3 Q. No regional manager ever told you that the --
4 taking the immunization training course was mandatory;
5 correct?

6 A. Correct.

7 Q. No divisional manager ever told you that
8 taking the immunization training course was mandatory;
9 correct?

10 A. Correct.

11 Q. As we sit here today, do you know the names
12 of any divisional managers that were divisional
13 managers from January 1, 2013, forward, other than
14 Mr. Moore and Mr. Patel?

15 A. Not that I can recall.

16 Q. As we sit here today, do you even know how
17 many divisional managers there were from January 1,
18 2013, to present?

19 MR. EPSTEIN: Are you talking about the
20 entire United States?

21 MR. YSLAS: Right.

22 THE WITNESS: I have no idea.

23 BY MR. YSLAS:

24 Q. Do you know the specific territories that
25 those divisional managers supervised?

1 A. No.

2 Q. Do you know how many pharmacies Wal-Mart has
3 nationwide?

4 A. No.

5 Q. Do you have any approximation?

6 A. It would be a very, very rough one.

7 Q. Are you able to approximate, or would it be a
8 guess?

9 A. It would be a guess.

10 Q. Okay. If you had to guess, how many
11 pharmacies?

12 A. I would say 4,000.

13 Q. Do you know approximately how many pharmacies
14 Wal-Mart has in California?

15 A. No.

16 Q. Could you give an estimate?

17 A. No.

18 Q. If you had to guess, how many in California?

19 MR. EPSTEIN: Calls for speculation. Lacks
20 foundation.

21 THE WITNESS: I don't even want to guess.

22 BY MR. YSLAS:

23 Q. So you have no idea?

24 A. No.

25 Q. Do you know how many states pharmacies --

1 Wal-Mart has pharmacies in throughout the United
2 States?

3 A. No.

4 Q. Do you know how many pharmacists Wal-Mart has
5 approximately nationwide?

6 A. I would say -- I would have to guess..

7 Q. Do you have an estimate?

8 A. Well, I can tell you according -- no, I
9 couldn't guess. No.

10 Q. Do you know approximately how many
11 pharmacists there are in California?

12 A. No.

13 Q. Do you know how many pharmacists have taken
14 the immunization training course in the United States?

15 A. No.

16 Q. Do you have any estimate?

17 A. No.

18 Q. Any idea?

19 A. No.

20 Q. Do you have any idea how many pharmacists
21 have taken the immunization training course in
22 California?

23 A. No.

24 Q. When did the rollout of the immunization
25 training course take place at Wal-Mart?

1 A. I don't know exactly.

2 Q. Can you give me an approximation?

3 A. It would be a guess.

4 Q. So you can't give me an estimation; is that
5 right?

6 A. Correct.

7 Q. Because you don't know?

8 A. Correct.

9 Q. Okay. Was it after sometime in January 1,
10 2013?

11 A. I wouldn't be able to tell you.

12 Q. When did you first hear about the
13 immunization training course at Wal-Mart?

14 A. I believe it was summer of 2013.

15 Q. Who did you hear it from?

16 A. I can't recall.

17 Q. Do you recall what you heard?

18 A. Not exactly.

19 Q. Do you recall any details of what you heard?

20 A. Not details, no.

21 Q. Do you recall anything generally?

22 A. Yes.

23 Q. What do you recall?

24 A. Something about Wal-Mart wanted us
25 pharmacists to become immunization-certified.

1 Q. Do you -- do you know if any policy was ever
2 developed at Wal-Mart where taking the immunization
3 training course was -- was required?

4 A. Not in those words.

5 Q. Was there ever an official policy -- sorry.
6 Strike that.

7 Was there ever a policy developed by Wal-Mart
8 in any words, in your mind, that would apply uniformly
9 that taking the immunization training course was
10 mandatory?

11 A. Yes.

12 Q. Was that policy in writing?

13 A. Yes.

14 Q. Where was it in writing?

15 A. On the Wire.

16 Q. The Wire is W-i-r-e?

17 A. Correct.

18 Q. What does that stand for?

19 A. I don't know.

20 Q. Huh?

21 A. I don't know.

22 Q. What is the Wire?

23 A. It's the Internet, the -- Wal-Mart's internal
24 Internet.

25 Q. And where on the Wal-Mart -- well, where on

1 the Wire was this policy?

2 A. Under the tab PAID Toolkit. P-A-I-D.

3 Q. And P-A-I-D is capitalized?

4 A. Correct.

5 Q. What does that stand for?

6 A. Pharmacist Administrative Immunization
7 Delivery.

8 Q. Do you know who the author of the PAID
9 toolkit was -- author or authors?

10 A. No.

11 Q. Do you know the intent of the authors in
12 drafting the PAID toolkit?

13 A. Yes.

14 Q. What was it?

15 A. To provide a step-by-step process as to how
16 to deliver immunizations and how important it was for
17 us to use it as a tool to drive sales and, therefore,
18 to make it a mandatory skill to earn.

19 Q. When was the PAID toolkit made available?

20 A. I'm sorry?

21 Q. When was the PAID toolkit made available on
22 the Wire?

23 A. I can't remember.

24 Q. Sometime in 2013?

25 A. I looked at it sometime during 2013.

1 Q. You just don't remember when it -- you just
2 don't know when it was made available?

3 A. No, I do not.

4 Q. Did the PAID toolkit specifically say that
5 taking the immunization training course or becoming
6 immunization-certified was mandatory?

7 A. Not in those words.

8 Q. What words?

9 A. I'm sorry?

10 Q. What words did it use that, in your mind,
11 caused you to believe it was mandatory?

12 A. To drive sales. To start immunizations as
13 soon as we were certified. And I believe on the last
14 page there were some references as to the importance
15 of becoming certified.

16 Q. Can you turn to Exhibit 8, which is Exhibit 3
17 to the Second Amended Complaint, which is confidential
18 and has been sealed.

19 A. (Witness complies.)

20 Q. Do you have the document in front of you?

21 A. Yes.

22 Q. This document at the top says: "Overview:
23 The toolkit provides all guidance and instruction for
24 Wal-Mart Pharmacist Administered Immunization Delivery
25 (PAID) program."

1 A. On Page 5 of 6, where it says "Wal-Mart
2 vaccine goal tracker."

3 Q. Okay.

4 A. Anytime there's a goal tracker, that means
5 it's got to do with your sales, and they would be
6 monitoring you -- "they" being Wal-Mart -- as to how
7 you're doing -- how many immunizations you're doing.
8 And they would keep a very close eye on you, and they
9 would set expectations, which is exactly what they
10 did.

11 Q. Okay. Do you know -- strike that. Is there
12 anything else in this document, the PAID toolkit, that
13 caused you to believe that taking the immunization
14 training course was mandatory?

15 A. Not that I can look at at the moment.

16 Q. Do you know if the author of this document
17 intended to convey that taking the immunization
18 training course was mandatory?

19 A. I can tell you that the intention was there,
20 I believe.

21 Q. Well, you say "I believe." Do you know?

22 A. Like I said, I believe that that was the
23 intention.

24 Q. Okay. But you don't know for sure what the
25 intention was; true?

1 Q. Clearly, there's no words in this document
2 that say taking the immunization training course is
3 mandatory; correct?

4 A. Not in so many words, no.

5 Q. And you don't know who authored the document;
6 right?

7 A. No, I do not.

8 Q. So you're basing your belief on what you've
9 described in terms of promoting vaccines and the
10 in-store vaccine goal tracker; right?

11 A. Correct. And the fact that Wal-Mart has put
12 out this whole policy regarding the immunization.

13 Q. And you say the policy is this document, the
14 PAID toolkit; right?

15 A. There is another one, which was referred to
16 as pharmacist immunization training central. There
17 was also a Q&A. Those are the ones that come to my
18 mind at this point.

19 Q. Okay. So I want to make sure I understand.
20 Are those the documents that you, in your mind,
21 believe are an official policy of Wal-Mart making the
22 immunization training course mandatory, or are they
23 evidence that the training course was mandatory?

24 A. They -- I believe they're policies.

25 Q. Okay. So the written policy isn't just the

1 PAID toolkit; it's the pharmacy immunization central
2 and the Q&A?

3 MR. EPSTEIN: Training central.

4 BY MR. YSLAS:

5 Q. Is that right?

6 A. No. The Q&A, I don't believe, is a policy.
7 The Q&A is just a Q&A.

8 Q. Okay. So the policy is the PAID toolkit and
9 the pharmacy immunization central?

10 A. Those are the ones I can think of at the
11 moment.

12 Q. Do you know whether other pharmacists
13 interpreted the PAID toolkit as conveying the message
14 that the -- taking the immunization certification
15 training program was mandatory?

16 A. I wouldn't be able to tell you.

17 Q. Because you don't know; right?

18 A. Not that I can think of at the moment of any
19 pharmacist.

20 Q. Okay. In other words, the PAID toolkit
21 doesn't state that it's mandatory to take the
22 immunization training course; right?

23 A. Not in those words.

24 Q. Okay. And whether a pharmacist interpreted
25 it the way you did depends on their individual

1 experience of how they interpreted the PAID toolkit;
2 right?

3 A. When it comes to the PAID toolkit, it's -- I
4 can tell you what my interpretation of it was.

5 Q. Okay. But you don't know the interpretation
6 of other pharmacists; correct?

7 A. I can guess.

8 Q. Okay. But you don't know; correct?

9 A. No.

10 Q. Is that correct?

11 A. Correct.

12 Q. Okay. It would be speculation on your part
13 as to how other pharmacists interpreted the intent of
14 the PAID toolkit; correct?

15 A. By the conversations that we had.

16 Q. Okay.

17 A. One way or another, they felt that it was
18 mandatory.

19 Q. Okay. The pharmacists that you spoke to felt
20 it was mandatory; right?

21 A. All of them.

22 Q. Okay. My question is a little bit different.
23 Two parts to it.

24 The first part is: You don't know how every
25 pharmacist interpreted the intent of the PAID toolkit;

1 declaration.

2 THE WITNESS: Yes, it's on Page 4 of my
3 declaration that talks --

4 BY MR. YSLAS:

5 Q. It's -- yeah. So you want to -- I want to
6 look at the actual document. And if you look at the
7 exhibit that we've marked as Exhibit 4, which are
8 the -- the documents that were sealed as a part of
9 your declaration, within that document, if you look at
10 Exhibit 4, it's Bates-labeled P100 at the bottom.

11 A. Correct.

12 Q. Okay. And it states -- it states at the top,
13 "Pharmacist Immunization Training Central."

14 Do you see that?

15 A. Yes.

16 Q. Okay. Now, this document does not state that
17 taking the immunization training program was
18 mandatory; correct?

19 A. I don't know. I don't believe so.

20 Q. Okay. In fact, the -- the first item at the
21 top, it says, "Interested in becoming a certified
22 immunizer?"

23 Do you see that?

24 A. Correct.

25 Q. Okay. Do you know who authored this

1 document, the pharmacist immunization training central
2 document?

3 A. No, I don't.

4 Q. Do you know what the intent of the author of
5 this document was?

6 A. The intent, I believe, was to explain the
7 process of becoming certified.

8 Q. Okay. If you're interested in becoming an
9 immunization -- certified immunizer?

10 A. That's what it says. It doesn't say "if"; it
11 says, "Interested in becoming a certified immunizer?"

12 Q. Okay. Did you interpret this, though --
13 there's a question mark there. So my question to you
14 is: Did you interpret this as meaning if you're
15 interested in becoming a certified immunizer, this is
16 what you do?

17 A. This is after feeling the pressure and
18 feeling that if I didn't do it, it would adversely
19 affect my employment. And they're asking me: Now are
20 you interested in becoming a certified immunizer?

21 That's how I interpret it.

22 Q. Okay. What you're saying is you interpret
23 this as being disingenuous? In other words, your
24 interpretation of this is, rather than the actual
25 words, was not really asking you if you're interested?

1 is the people that were in management level -- had
2 management level authority that caused you to form
3 that understanding.

4 Do you understand?

5 A. Yes, I believe so.

6 Q. Okay. So I think it's pretty clear that the
7 people that caused you to form the understanding that
8 taking the training course was mandatory were
9 Stephanie Fisher and MaryAnn Dabney; right?

10 A. Directly? Yes.

11 Q. Okay. Other than Ms. Fisher and Ms. Dabney,
12 there wasn't anyone else in management that caused you
13 to understand that taking the training course was
14 mandatory; is that correct?

15 A. Again, directly? Yes.

16 Q. Okay. So by "directly," you mean who made
17 direct statements to you?

18 A. Correct.

19 Q. Okay. So the people at Wal-Mart that made
20 direct statements to you that taking the mandatory --
21 taking the training course was mandatory were MaryAnn
22 Dabney and Stephanie Fisher; correct?

23 A. To the best of my recollection.

24 Q. Okay. There was no one else in management
25 who directly made such statements to you; correct?

1 A. To the best of my recollection, yes.

2 Q. Okay. Now, you used the word "direct." So
3 was there anyone else in management that indirectly
4 made any statements to you that caused you or -- or
5 engaged in any other conduct that caused you to
6 believe that the training course was mandatory?

7 A. Yes.

8 Q. And who was that?

9 A. Ami Bhatt had -- has told -- had told a
10 pharmacist that if someone refused to take the
11 training course and becomes certified, they would be
12 removed from their home store.

13 Q. Now, Ms. Bhatt never told you that; right?

14 A. At the beginning, you said "indirectly," so
15 that's what we're focusing on.

16 Q. Right. And so I have a clear record,
17 Ms. Bhatt never directly told you that; right?

18 A. Correct.

19 Q. Okay. Now, your testimony is she told
20 another pharmacist that?

21 A. Correct.

22 Q. You weren't -- strike that. Were you present
23 during that conversation?

24 A. No.

25 Q. Okay. So you heard about the conversation

1 Wal-Mart encouraged its pharmacists to take the course
2 and become certified.

3 Q. Okay. We've already identified Ms. Dabney.
4 Do you know who told Ms. Dabney about this goal of
5 having two pharmacists --

6 A. Who told Ms. Dabney? No, I do not.

7 Q. Okay. Other than the statement by Ms. Dabney
8 about the goal which -- and the two statements by
9 Ms. Bhatt, is there any other statements by Wal-Mart
10 management that indirectly caused you to believe that
11 taking the immunization training course was mandatory?

12 A. Actually, I do recall that a pharmacist by
13 the name Jason Berg, who works at the Laguna Hills
14 store, he directly told me that Ami Bhatt was a huge
15 fan of immunizations, and that if a store did not
16 perform at the expected level or didn't have all its
17 pharmacists immunized, that she would make sure they
18 would become certified.

19 Q. Other than the statements you've testified
20 now as three by Ms. Bhatt -- again, the last statement
21 you just testified to, you didn't personally witness
22 that; right? That's what Mr. Jason Berg told you;
23 right?

24 A. Told me, yes.

25 Q. Other than those three statements by

1 Ms. Bhatt and then the e-mail of Ms. Dabney you
2 referred to, are there any other indirect statements
3 by Wal-Mart that caused you to believe that --
4 Wal-Mart management that caused you to believe that
5 taking the training course was mandatory?

6 A. Not that I can recall at this point.

7 Q. Have you ever spoken to a woman named Susanne
8 Hiland, H-i-l-a-n-d?

9 A. Not that I recall at this moment.

10 Q. Okay. Ever had any written communications
11 with Ms. Hiland?

12 A. Susanne Hiland? Not that I recall.

13 Q. Okay. Have you ever had any communications
14 with a woman named Deanna, D-e-a-n-n-a, Seiler,
15 S-e-i-l-e-r?

16 A. Not that I recall.

17 Q. Okay. And I know you -- you identified in
18 your declaration a -- a communication that you
19 received from Pam Piotrowski, P-i-o-t-r-o-w-s-k-i.

20 Have you ever spoken to Ms. Piotrowski
21 directly?

22 A. I don't believe so.

23 Q. Have you ever had any e-mail communications
24 with Ms. Piotrowski?

25 A. I may have, but I cannot recall.

1 Q. Okay. And did you work in the pharmacy 40
2 hours that week, or did you -- did you -- in other
3 words, that one day that you took the live portion,
4 was that substituted for your workday?

5 A. It was substituted.

6 Q. Okay.

7 A. That's what I meant earlier; they had to find
8 coverage.

9 Q. I see. And where did you take the training
10 course?

11 A. The home study, you mean?

12 Q. Yeah. Well, where did you take the live
13 portion?

14 A. The live portion was at the regional office
15 in Irvine.

16 Q. And the home study portion I assume you
17 studied for at home?

18 A. Yes.

19 Q. Okay. As a pharmacist, were there certain
20 requirements to keep your license?

21 A. What's -- I'm sorry?

22 Q. Were there certain requirements, like
23 continuing education, that were required to keep your
24 license?

25 A. Yes.

1 Q. Okay. And did taking this immunization
2 training course qualify towards credit towards the
3 continuing education credit?

4 A. Yes.

5 Q. Okay. So is it fair to say you received a
6 benefit from taking the immunization training course
7 inasmuch as it satisfied a portion of your continuing
8 education credit?

9 A. I didn't need that benefit.

10 Q. Well, I'm not asking if you needed it. I'm
11 asking if you received it.

12 A. I received CEs, yes.

13 Q. Okay.

14 A. Continuing education.

15 Q. Okay. So you received the benefit of CE
16 credit as a result of taking the immunization training
17 program; right?

18 A. Correct.

19 Q. And what -- what was the requirement of CE,
20 continuing education, to become -- to maintain your
21 license as a pharmacist?

22 A. 30 hours every 2 years.

23 Q. Okay. And 30 hours every 2 years as of -- do
24 you recall the period of time that you had to do that?
25 In other words, usually, you know, as a lawyer, I've

1 got to do it every three years, and there's sort of a
2 date by which I need to do it.

3 Do you recall, you know, as of December 2013,
4 what -- what your deadline date was?

5 A. Yes. It's every two years before the
6 expiration of your license or the time to renew it.

7 Q. Okay. And for you, when was that?

8 A. May of 2014.

9 Q. So from May of 2012 to May of 2014, you
10 needed to do 30 hours?

11 A. Correct.

12 Q. Okay. And as of December 2013 -- before you
13 took the immunization training course, had you done
14 any of the CE?

15 A. Yes.

16 Q. How many hours?

17 A. I can't remember.

18 Q. Had you satisfied the 30-hour requirement at
19 that point?

20 A. I can't remember.

21 Q. Do you know how many hours of credit you
22 received for the immunization training course?

23 A. Yes. 20 hours.

24 Q. So taking the immunization training course
25 would satisfy two-thirds of the CE requirements?

1 A. If you had not done all your CEs already.

2 Q. Right. And hypothetically, somebody could
3 have not done any CE, take it, and have two-thirds of
4 their CE done; right?

5 A. Hypothetically.

6 Q. As we sit here today, you'd have no idea --
7 you'd have to individually look at every pharmacist to
8 figure that -- whether or not somebody had completed
9 their CE by the time that they took the immunization
10 training course; right?

11 A. Correct.

12 Q. Yeah.

13 A. I wouldn't know they would.

14 Q. Yeah. And as a result of taking the
15 immunization-certified training course, you became
16 able to administer immunizations; right?

17 A. Correct.

18 Q. Do you understand that California law
19 requires any pharmacist who administers vaccines to
20 first take an immunization certification program?

21 A. Yes.

22 Q. Having obtained your immunization
23 certification, you could use that certification to
24 offer immunizations for other pharmacies; right?

25 A. Other pharmacies? Once you have the

1 PAID toolkit or maybe the -- that it actually spells
2 that out, but I never really paid attention to that
3 section because it didn't really apply to me.

4 Q. Okay. So you don't really know?

5 A. I'm going to say that I'm not 100 percent
6 sure --

7 Q. Okay.

8 A. -- if Wal-Mart would have accepted any other
9 certification.

10 Q. Did anyone at Wal-Mart ever tell you directly
11 that if you didn't take the immunization training
12 course, you'd be transferred to a different store?

13 A. Not directly.

14 Q. Did anyone from Wal-Mart ever tell you that
15 if you didn't become immunization-certified, you would
16 lose hours?

17 A. Not directly.

18 Q. Did anybody from Wal-Mart ever indirectly
19 tell you in some way that you would be transferred if
20 you didn't become immunization-certified?

21 A. I heard the message loud and clear through
22 others.

23 Q. Through who?

24 A. Like I said earlier, the comments that Ami
25 had made.

1 A. That is exactly what it says.

2 Q. No, the -- exactly what it says is, "Wal-Mart
3 will only hire pharmacists who are IMZ-certified."

4 So your interpretation of what that is
5 intended to mean is what you've just testified to;
6 right?

7 A. Again, to me, an indirect threat carries as
8 much weight as a direct threat.

9 Q. Okay. And you interpret that as an indirect
10 threat?

11 A. It is a threat, yes.

12 Q. Okay. Looking at Exhibit 6 of your
13 declaration, which is a -- a national certificate
14 program for pharmacists, Module 1, Pharmacists as
15 Vaccine Advocates, it's Bates-labeled P191 through
16 194, is there anything in this document that conveys
17 that taking the immunization training program is
18 mandatory?

19 A. No. This is the training course by APhA.

20 Q. Right. In other words, this is not a
21 document authored by Wal-Mart; right?

22 A. This is not a document created by Wal-Mart.

23 Q. Right. Or authored by anyone at Wal-Mart.
24 In other words, the author of this document is who?

25 A. I don't believe so.

1 Q. Okay. You don't believe that this document
2 was authored by anyone at Wal-Mart; right?

3 A. I -- I don't believe so.

4 Q. Okay. Was this document provided as part of
5 the immunization training?

6 A. Yes.

7 Q. Is there any part of this document which
8 states that immunizations are a part of a pharmacist's
9 job?

10 A. On Module 1 there is a section -- well,
11 there's one section that says, "Pharmacists are
12 uniquely positioned to be centers for the
13 dissemination of vaccine information. Pharmacists in
14 all practice settings can serve as vaccine advocates,
15 providing" --

16 Q. Which portion are you reading from?

17 A. Second column on the right --

18 Q. Of which page?

19 A. -- the last paragraph.

20 Q. Which Bates-labeled page?

21 A. Oh. 192.

22 Q. Okay. And what does this -- the paragraph
23 start with?

24 A. "Pharmacists are uniquely positioned."

25 Q. Okay. So, in your mind, that paragraph

1 states how immunizations are a part of a pharmacist's
2 job?

3 A. That, and, also, right next to it, to the
4 left, it says, "Almost two decades ago, pharmacists
5 began their modern-day involvement with immunization
6 services in an effort to provide high-quality
7 pharmaceutical care."

8 So obviously it's part of their job.

9 Q. Okay. When you were hired by Wal-Mart, was
10 it a requirement that you administer vaccines?

11 A. Well, obviously, no.

12 Q. So when you were hired by Wal-Mart, it wasn't
13 a part of your job to administer vaccines; right?

14 A. No.

15 MR. YSLAS: The videographer is letting me
16 know that we're almost out of tape. So why don't we
17 take a short break.

18 MR. EPSTEIN: I think that's all the tape he
19 brought. He didn't bring any more tape. We're done.

20 THE VIDEOGRAPHER: The time is 3:00 p.m.
21 This is the end of Tape 3. We are off the record.

22 (Brief recess.)

23 THE VIDEOGRAPHER: Back on the record. The
24 time is 3:18 p.m. This is the beginning of Tape 4.

25 / / /

1 BY MR. YSLAS:

2 Q. Ms. Nikmanesh, looking at Exhibit 7 of your
3 declaration, which are job descriptions --

4 A. Exhibit 7.

5 Q. -- or I should say a job description.

6 A. Exhibit 7.

7 Q. So turning to Exhibit 3, which is -- is your
8 declaration, and then attached to it as Exhibit 7 is
9 the pharmacy manager description --

10 A. I got it.

11 Q. -- which is P126 --

12 A. Yes, I got it.

13 Q. -- through 129 --

14 Well, actually, I know there's a few of them.
15 There's two of them. There's one, P126 through 129 is
16 for the pharmacy manager. And then 130 through 132
17 are for the staff pharmacist.

18 Is there anything in this document that
19 indicates to you that being immunization-certified is
20 mandatory?

21 A. One of the job qualifications, it states it's
22 preferred qualification.

23 Q. Okay. Does "preferred" mean required to you?

24 A. It ties in with MaryAnn Dabney's comment
25 about Wal-Mart starting to only hire pharmacists who

137

1 were certified. To me, that's a requirement.

2 Q. Okay. So I want to make sure I understand.

3 This document doesn't directly say that being

4 immunization-certified is mandatory; right?

5 A. It relays the message.

6 Q. No. But it doesn't directly say those words;

7 right?

8 A. Not -- not in so many words, no.

9 Q. Okay. What it says is that immunization
10 certification is a preferred qualification; right?

11 A. Correct.

12 Q. Okay. And is it fair to say the word

13 "preferred" means more desirable?

14 A. Preferred is basically -- as far as Wal-Mart
15 is concerned, would give one pharmacist the
16 competitive edge.

17 Q. Okay.

18 A. Again, as far as Wal-Mart was concerned.

19 Q. Okay. And this job description is part of
20 your overall interpretation that taking the
21 immunization certification course is mandatory; right?

22 A. Yes. And if you'd pay attention, it's dated
23 September of 2013. And as you move forward, the one
24 dated November 2014 specifically says "Minimum
25 qualifications is APhA Immunization-Certified." So

1 as a matter of fact. This just basically confirms the
2 message that we have been given by Wal-Mart that
3 that's what Wal-Mart wants -- he wants its pharmacists
4 to be certified, immunization-certified.

5 Q. Okay. And you're looking in Exhibit 8,
6 Page P114?

7 A. P114, yes.

8 Q. Where it says APhA immunization-certified as
9 a minimum qualification; right?

10 A. Yes.

11 Q. Okay. And this particular job posting, per
12 the top of the page, deals with the staff pharmacist
13 part-time jobs in Massachusetts?

14 A. Yes.

15 Q. Okay. Do you have any idea of what the
16 demands for immunization certifiers were in
17 Massachusetts at Wal-Mart as of the time this was
18 posted?

19 A. I'm sorry. Repeat the question.

20 Q. Do you have any idea what the demands were
21 for -- for pharmacists to be immunization-certified in
22 Massachusetts at the time that this job posting was
23 posted in November 2014?

24 A. There's a high demand all over the country.

25 Q. Okay. Do you specifically know what the

1 demand was in Massachusetts when this was posted?

2 A. I wouldn't know specifically in

3 Massachusetts.

4 Q. Do you know who authored this job posting?

5 A. It was by Wal-Mart.

6 Q. Do you know who specifically at Wal-Mart?

7 A. I wouldn't know.

8 Q. Okay. Do you have any idea what the intent
9 was behind this job posting?

10 A. One of the intentions is to make it very
11 clear that if you're not immunization-certified, you
12 are not qualified to apply for the job.

13 Q. Okay. As a new hire; right?

14 A. Yes.

15 Q. Okay. Now, going to Page P116, this is
16 another job posting for pharmacy managers in Dallas.
17 Now, this one actually has a minimum qualification --
18 has a -- immunization certification as a preferred
19 qualification; right?

20 A. Correct.

21 Q. Okay. So is there anything in this document
22 here on P116 that, in your mind, indicates that a
23 current pharmacist must be immunization-certified?

24 A. If it's a preferred one, yes, because then
25 again Wal-Mart is going to choose the pharmacist who's

1 Q. In your pharmacy.

2 A. On a daily basis? Yes.

3 Q. Okay. So you do have some idea of what the
4 prescription demands are in the pharmacies that you
5 worked in?

6 A. A rough idea.

7 Q. Okay. But you just don't know about
8 pharmacies that you didn't work in; right?

9 A. Correct.

10 Q. Looking at Exhibit 9 of your declaration,
11 which is an e-mail -- well, it's an e-mail chain. The
12 e-mail chain is Bates-labeled P73 through 74. And the
13 first e-mail comes from Joan Ordonez, who's a pharmacy
14 manager in Store 3796, Ontario, California.

15 Do you see that?

16 A. Yes.

17 Q. Then eventually Ms. Fisher forwards it to a
18 number of people, including you, on December 2; right?

19 A. Correct.

20 Q. Is there anything in this e-mail chain, in
21 your mind, that indicates that taking the immunization
22 certification program is mandatory?

23 A. This is an informational e-mail regarding the
24 12-hour study not being reimbursable.

25 Q. Okay. So the answer to my question is no,

1 then? There's nothing in this e-mail chain, which is
2 Exhibit 9, that indicates that -- to your declaration
3 that indicates that taking the immunization
4 certification program is mandatory; is that correct?

5 A. Correct.

6 MR. YSLAS: Did you need a minute, Eric? I
7 saw you motioning towards her. Is there something you
8 wanted to point out?

9 THE WITNESS: No.

10 MR. EPSTEIN: Not now.

11 THE WITNESS: Not the e-mail from Joan
12 Ordonez and not the e-mail from Stephanie Fisher, but
13 my e-mail to them.

14 BY MR. YSLAS:

15 Q. Okay. So, for the record, Mr. Epstein just
16 motioned and pointed to a portion of Exhibit 12 in the
17 e-mail and pointed you to the provision that you're
18 talking about right now; is that right?

19 A. No, actually. I am talking about my --

20 Q. Okay. But your attorney just pointed to a
21 portion of the exhibit. What I'm asking you is: He
22 just pointed to the portion that you're talking about
23 right now?

24 A. No. He actually just pointed to the
25 number -- to the name of the -- of the people there,

1 which I didn't understand what he meant by that.

2 Q. Okay.

3 A. Okay. There's --

4 Q. And now you're going to clarify your answer
5 as to a portion of this e-mail; right?

6 A. Yes.

7 Q. That's what you wanted to do now?

8 A. Yes.

9 Q. Okay. Go ahead.

10 A. Because you were talking about their -- their
11 e-mail, does it indicate if it's -- the course is
12 mandatory? So am I allowed to ask my lawyer why he
13 was pointing to the names of the --

14 MR. EPSTEIN: No, not now.

15 BY MR. YSLAS:

16 Q. You can do whatever you want.

17 MR. EPSTEIN: No, just answer the question,
18 though. You were going to reference your e-mail, so
19 go ahead.

20 THE WITNESS: No, but what I'm saying is:
21 Not in their e-mails, but in my e-mail, you read what
22 it says I was -- I just was informed that I had been
23 signed up for the class.

24 BY MR. YSLAS:

25 Q. Where does it say that?

1 A. My e-mail, not theirs. Right -- right above.

2 Q. Okay. So you're looking at --

3 A. The very first sentence on top, where I say,

4 "Hi, Stephanie."

5 Q. Okay. Maybe -- this is Exhibit 9; right?

6 A. Bate No. 73.

7 Q. Okay. It says, "Sorry. But I was just
8 informed that I had been signed up for the class."

9 A. Correct.

10 Q. Okay. That's the portion that, in your mind,
11 indicates that taking the course -- training course
12 was mandatory?

13 A. Well, I didn't sign up for it; I was signed
14 up for it.

15 Q. Who signed you up for it?

16 A. I believe it was Stephanie Fisher.

17 Q. Do you know?

18 A. That's what my belief was. I can't think of
19 anyone else.

20 Q. Okay. But I -- I'm asking you a very
21 specific question about personal knowledge.

22 Do you know if Ms. Fisher signed you up for
23 the immunization training course?

24 A. That's what I assumed.

25 Q. I'm not asking you what you assumed; I'm

1 asking what you know.

2 Do you understand the difference?

3 A. Well, I don't know, then, in that case. I'm
4 not 100 percent sure who did.

5 Q. Okay. So I have a clear record, you don't
6 know for sure who signed you up for the immunization
7 training course; correct?

8 A. Correct.

9 Q. All right. But you know that you didn't do
10 it on your own?

11 A. Correct.

12 Q. Okay. Somehow it came to your attention that
13 you were signed up for it; is that right? Is that
14 your testimony?

15 A. Correct.

16 Q. Okay. And you never took any voluntary act
17 to indicate that you were signing up for the
18 immunization training course; is that your testimony?

19 A. Not that I recall.

20 Q. Okay. Did you ever write any e-mails or
21 engage in any communications with anyone in which you
22 said that the immunization training course was
23 voluntary?

24 A. I apologize. Repeat the question.

25 Q. Did you ever write any e-mails or engage in

1 document that indicates to you that taking the
2 immunization training course is mandatory?

3 A. Not that I can see.

4 Q. Turning to Exhibit 11 of your declaration,
5 which is also referenced at Paragraph 27 of your
6 declaration, in Paragraph 27 of your declaration, you
7 indicate that you spoke to numerous pharmacists in
8 other states by calling them up on the phone; right?

9 A. Correct.

10 Q. All right. This is a list of phone numbers,
11 and it's got states next to it.

12 I guess my first question for you is: Where
13 did you get these phone numbers from?

14 A. I believe I collected it off Google.

15 Q. Okay. So these are -- these are the phone
16 numbers of pharmacies in various states -- sorry.
17 Strike that.

18 These are the phone numbers of Wal-Mart
19 pharmacies in various states; is that right?

20 A. Correct. Two pharmacies in each state.

21 Q. Okay. So, for example, next to Alabama, it
22 says 205-926-6553.

23 Do you see that?

24 A. Correct.

25 Q. Okay. So that's the number of a pharmacy in

1 Alabama?

2 A. Wal-Mart pharmacy.

3 Q. Okay. It's not the number of a pharmacist;
4 it's the number of a pharmacy in Wal-Mart; right?

5 A. Wal-Mart pharmacy, correct.

6 Q. Okay. So you went on Google; you got the
7 phone numbers of two pharmacies in each state listed
8 here; right?

9 A. Correct.

10 Q. And then you started calling these
11 pharmacies; is that right?

12 A. Correct.

13 Q. And what phone number did you call from?

14 A. I believe it was my cell phone.

15 Q. Cell phone number that you've provided
16 already?

17 A. Yes.

18 Q. Okay. When you called up these pharmacies,
19 did you identify -- well, strike that.

20 When did you do this?

21 A. I can't remember.

22 Q. Did you do it after you stopped working for
23 Wal-Mart?

24 A. I can't remember.

25 Q. So you can't remember if you placed these

1 phone calls while you were employed with Wal-Mart or
2 after you left? You don't know one way or the other;
3 right?

4 A. No, I can't remember.

5 Q. When you called up the pharmacy, each person,
6 did you speak to a pharmacist in each of these
7 numbers?

8 A. Yes.

9 Q. Did you identify yourself as a Wal-Mart
10 employee?

11 A. I -- I can't remember. I would just tell
12 them -- I would ask them if they have taken the
13 immunization training course.

14 Q. Okay. So I want to make sure I have a clear
15 answer to one question.

16 When you called up these pharmacies and you
17 talked to a pharmacist, did you tell them that you
18 were a current Wal-Mart employee?

19 A. I can't remember because I can't remember if
20 I did it prior or after my termination.

21 Q. Okay. So it's possible you made these calls
22 after your termination?

23 A. It's possible.

24 Q. Okay. And you don't recall whether or not
25 you identified yourself as a Wal-Mart employee?

1 A. If I -- I -- the way I would do it normally,
2 like I did with JoLynn Coleman, is that, "I took the
3 training course with Wal-Mart" -- so that was a true
4 statement -- "and I wanted to know if you have taken
5 the course."

6 This is the -- to the best of my
7 recollection. I would not lie. So I wouldn't say,
8 "I'm a Wal-Mart employee," if I were not a Wal-Mart
9 employee at the time.

10 Q. Okay. So what you're clearly testifying to
11 right now is that you didn't misrepresent that you
12 were a Wal-Mart employee?

13 A. Absolutely not.

14 Q. Okay. But you don't remember one way or the
15 other if -- if you affirmatively told somebody one way
16 or the other if you were a Wal-Mart employee.

17 Do you understand the difference?

18 A. Yes. I could tell you that I would never
19 lie.

20 Q. Okay. I know you wouldn't lie, but the issue
21 is an omission -- is really, I think -- that's what
22 I -- what I'm asking is: Did you call up these
23 employees after you left Wal-Mart and didn't tell them
24 one way or the other if you were a Wal-Mart employee?
25 That's my question.

1 A. I can't remember.

2 Q. Okay. For each of these pharmacists that you
3 spoke to, did you take down what their name was?

4 A. Not all of them.

5 Q. Did you take down the name of some of them?

6 A. Yes.

7 Q. And do you have -- do you know what those
8 names are?

9 A. There was Lisa in Alabama and then Scott in
10 Alaska.

11 Q. That's it; right?

12 A. Oh, Cindy in Florida. It's right there.

13 Q. So as we sit here today, you can give me the
14 first name of three of the people that you talked to
15 on this list; right?

16 A. Yes, with their phone numbers.

17 Q. The phone numbers --

18 A. The phone numbers of the Wal-Mart that they
19 worked at at the time.

20 Q. Okay. But you can't remember when you
21 called; right?

22 A. No.

23 Q. Okay. Did you call on different days or on
24 a -- one day only?

25 A. No, I believe it was all on the same day.

1 Q. As we sit here today, do you know if any of
2 the pharmacists on this list were classified as exempt
3 pharmacists?

4 A. Actually, right next to their names, you see
5 "S"? That stands for salary.

6 Q. Show me. I'm not seeing it.

7 A. Where it says "No, No, No, No," right next to
8 it --

9 Q. Okay.

10 A. -- to the right of it.

11 Q. Okay. So you have a circle around some of
12 them and -- and not a circle around other ones.

13 Is it your testimony that all of the S's,
14 circled or uncircled, are salaried employees?

15 A. Correct.

16 Q. So for those that you spoke to in Alabama,
17 Alaska, Arizona, Arkansas, Colorado, Connecticut,
18 Delaware, Florida and Georgia -- those pharmacists
19 that you spoke to were exempt salaried employees;
20 right?

21 A. Yes. But some of them did say that floaters
22 would be nonexempt.

23 Q. Well, what did -- what did you do when you
24 called these people up? What did you say to them?

25 A. If they felt that the immunization

1 certification was mandatory.

2 Q. So just -- let's just back up for a second.
3 I want to make sure I understand kind of the totality
4 of the conversation.

5 You called up the pharmacy; somebody answers
6 and says, "Hello," whatever, you know.

7 Then what happens?

8 A. Then I would ask to speak to the pharmacist.

9 Q. And then what happened?

10 A. Then I said something to the effect that I
11 took the training course with Wal-Mart for the
12 immunization, and I wanted to know if they took it.

13 And if they would say yes, then I would say,
14 "Did you feel that you had to do it? Did you feel it
15 was mandatory? Or did you feel it was voluntary?"

16 And unanimously they said, "Are you kidding?
17 Of course it was mandatory."

18 Q. Okay. So every one of the pharmacists on
19 this list that you called said it was mandatory?

20 A. Yes. Hence, I stopped after the tenth one.

21 Q. Oh, okay. So you made ten -- in other words,
22 you called two in Alabama. Explain to me. Which ten
23 did you call?

24 A. The first ten states.

25 Q. I see. Okay. So you didn't call Hawaii,

1 Idaho, Illinois, Indiana, all the way down to New
2 Mexico; right?

3 A. No.

4 Q. The only states you called were Alabama,
5 Alaska, Arizona, Arkansas, Colorado, Connecticut,
6 Delaware, Florida and Georgia; right?

7 A. Yes.

8 Q. And each one of these that you called
9 involved salaried employees; right?

10 A. Correct.

11 I did ask them one more question.

12 Q. Okay.

13 A. If they got paid for the 12-hour study.

14 Q. And what did they say?

15 A. No.

16 Q. So I guess I'm confused. If they're exempt
17 employees, how do they get paid for the 12 hours?

18 A. That's what I didn't understand at the time,
19 so -- and they kept saying, "Well, because we're
20 salary, so we get paid the same amount of money no
21 matter what."

22 So that was the explanation.

23 Q. Okay. And in these phone calls, you never
24 talked to any nonexempt pharmacists; right?

25 A. I believe Cindy was nonexempt, I believe,

1 because, to the best of my recollection, she was a
2 floater.

3 Q. Okay. Other than Cindy, you didn't talk to
4 any other nonexempt pharmacists; right?

5 A. I don't believe so.

6 Q. Okay. As we sit here today, you haven't
7 talked to any nonexempt pharmacists outside of
8 California; right?

9 A. Not to the best of my recollection.

10 Q. Okay. So that I have a clean answer to make
11 sure, as we sit here today, you haven't talked to any
12 nonexempt pharmacists outside of California, other
13 than Cindy, whether or not the training course was
14 mandatory; right?

15 A. Not that I can recall.

16 Q. Outside of California, you really don't know
17 what was conveyed about the program being mandatory or
18 voluntary; right?

19 A. That was my question for the pharmacists, and
20 they unanimously said that they felt that it was
21 mandatory.

22 Q. Okay. Did they tell you anything
23 specifically about how they came to that
24 understanding?

25 A. No. We didn't specifically talk about the

REPORTER'S CERTIFICATE

I, Jan M. Roper, a Certified Shorthand Reporter No. 5705, do hereby certify:

That, prior to being examined, the witness named in the foregoing deposition, AFROUZ NIKMANESH, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth.

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter transcribed under my direction, and I hereby certify that the foregoing deposition is a true and correct transcript of my shorthand notes so taken.

I certify that a request has been made by, or on behalf of, the witness to review, correct and sign the transcript of these proceedings.

I further certify that I am neither counsel for nor related to any party to said action nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 24th day of June, 2015.

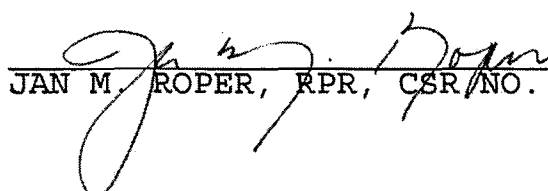

JAN M. ROPER, RPR, CSR/NO. 5705

EXHIBIT D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

AFROUZ NIKMANESH, ELVIS	)	CASE NO.:
ATENCIO, ANNA NGUYEN, AND	)	8:15-cv-00202 AG-JCG
EFFIE SPENTZOS, on behalf of)	
themselves, the general	)	VOLUME I
public, and all others)	
similarly situated,	)	(Pages 1 – 143)
)	
Plaintiffs,)	
)	
vs.)	
)	
WAL-MART STORES, INC., a)	
Delaware corporation, and)	
WAL-MART ASSOCIATES, INC., a)	
Delaware corporation, and)	
DOES 1 through 10, inclusive,)	
)	
Defendants.)	
_____)	

VIDEO DEPOSITION OF ANNA LINH NGUYEN
Friday, June 26, 2015
Los Angeles, California

Reported By:
Jan M. Roper, RPR,
CSR No. 5705
File No.: 150626JR

1 Q. And Ms. Fisher, was she supervising
2 another -- another market?

3 A. Yes.

4 Q. What was that?

5 A. I don't remember the market number, but it
6 was more in the L.A. area.

7 Q. Do you know how many stores, approximately?

8 A. Approximately the same.

9 Q. About 12 or 13?

10 A. About 12 or 13.

11 Q. Okay. So Ms. Fisher supervised at the time
12 anywhere from 24 to 26, approximately, stores; right?

13 A. That is correct.

14 Q. Okay. And they were all in Southern
15 California; correct?

16 A. Yes.

17 Q. Just -- you're almost getting ahead of me on
18 the answers.

19 A. I'm sorry.

20 Q. That's okay. I think we got an okay
21 transcript there, but --

22 So Ms. Fisher's authority was limited to
23 these 24 to 26 stores in Southern California; correct?

24 A. Yes.

25 MR. PARCELLS: Objection. Speculation.

1 A. Okay.

2 Q. -- Market 70 and then the market that you --

3 A. I don't remember.

4 Q. -- can't remember the name of, but it was in
5 the Los Angeles area.

6 Other than those two markets, do you have any
7 reason to believe Ms. Fisher's authority extended
8 beyond those two markets?

9 A. I am unsure.

10 Q. Are there any facts that you can provide me
11 today that would lead you to believe that her
12 authority extended beyond those two markets?

13 A. No.

14 Q. At the time, who was the regional manager, as
15 of January 1st -- well, strike that.

16 Ms. Fisher became your direct supervisor, did
17 you say, in the summer of 2013?

18 A. Yes.

19 Q. Okay. And before then it was Mr. Dukes;
20 right?

21 A. Yes.

22 Q. Okay. So focusing on now the January 2013
23 time frame when Mr. Dukes was your supervisor, his
24 region was Market 70; right?

25 A. Yes.

1 Q. Same 12 to 13 stores that you've already
2 talked about regarding Market 70; right?

3 A. Yes.

4 Q. Okay. And his authority was limited to those
5 12 to 13 stores; correct?

6 A. Yes.

7 Q. And at the time Mr. Dukes was your supervisor
8 in around January 2013, who did he report to?

9 A. Anthony Chung.

10 Q. And Mr. Chung was a regional manager?

11 A. Yes.

12 Q. And ultimately Mr. Chung -- when Ms. Fisher
13 became your -- strike that.

14 Mr. Chung: What area did he supervise?

15 A. I don't recall.

16 Q. Okay. So, as we sit here today, you don't
17 recall what area Mr. Chung supervised as regional
18 manager; correct?

19 A. Yes.

20 Q. As we sit here today, you don't know the
21 extent of Mr. Chung's authority while he was regional
22 manager; correct?

23 A. Yes.

24 Q. When Ms. Fisher became your direct supervisor
25 as a market manager, did Mr. -- was Mr. Chung still

1 MR. YSLAS: Can we just take a couple-minute
2 break. There's something going on with the live feed.

3 THE VIDEOGRAPHER: We're off the record. The
4 time is 10:59.

5 (Brief recess.)

6 THE VIDEOGRAPHER: This begins Media No. 2 of
7 the deposition of Anna Nguyen. We're on the record at
8 11:10.

9 MR. YSLAS: Okay. The videographer took a
10 few minutes to change the tape at the break.

11 Q. Ms. Nguyen, from January 1, 2013, to present,
12 do you know how many market managers there were for
13 areas covering California?

14 A. How many market managers?

15 Q. Right.

16 A. I don't have that answer.

17 Q. Do you have any estimate?

18 A. I can't even estimate.

19 Q. Because you don't have enough personal
20 knowledge to know that; right?

21 A. That is correct.

22 Q. And from January 1, 2013, can you give any
23 estimate as to how many market managers there were for
24 Wal-Mart throughout the United States?

25 A. I don't have that answer.

1 Q. You have no idea; correct?

2 A. I have no idea.

3 Q. From January 1, 2013, to present, do you have
4 any idea how many regional managers there were for
5 Wal-Mart in the United States?

6 A. No, I do not.

7 Q. Do you have any way of giving me an estimate?

8 A. No.

9 Q. Do you have any idea the territories that
10 these regional managers -- even if you don't know
11 their names or the number, do you have any idea how
12 they were divided up?

13 A. No, I do not.

14 Q. From January 1, 2013, to present, do you have
15 any idea how many divisional managers there were?

16 A. No, I do not.

17 Q. Do you have any idea how the divisional
18 managers' territories were divided up?

19 A. No, I do not.

20 Q. Do you have any idea of the divisional
21 managers' level of supervisory authority?

22 A. Could you restate or reclarify.

23 Q. Sure. The divisional managers supervise
24 certain territories within the United States; correct?

25 A. Yes.

1 Q. Do you have any idea the extent of those
2 territories?

3 A. I do not.

4 Q. So you really don't have any idea of the
5 authority the divisional managers had; correct?

6 MR. PARCELLS: Objection. I'm sorry. You
7 mean the extent of their territory or -- what
8 authority are you talking about?

9 BY MR. YSLAS:

10 Q. Your counsel has objected that the question's
11 vague.

12 Do you understand it? You can go ahead and
13 answer if you understand. Let me state it again.

14 A. Okay.

15 Q. As we sit here today, you cannot tell me the
16 level of authority divisional managers had from
17 January 1, 2013, to present; correct?

18 MR. PARCELLS: Objection as to "the level of
19 authority." Vague and ambiguous.

20 If you understand, go ahead.

21 THE WITNESS: I don't.

22 BY MR. YSLAS:

23 Q. Do you understand what the word "authority"
24 means?

25 A. I do. But "level," I'm not --

1 Q. Okay. Do you have any idea what the
2 divisional managers' authority was -- what their --
3 strike that.

4 Do you have any idea what the divisional
5 managers' duties were?

6 A. To -- from my understanding, to cover their
7 regionals. So each divisional has a number of regions
8 that they cover.

9 Q. Okay. And when you say "cover," would it be
10 fair to say that the divisional managers had authority
11 over those regions?

12 A. Yes.

13 Q. Okay. Beyond that superficial knowledge of
14 their authority, do you have any other knowledge about
15 what the divisional managers' authority was?

16 A. No.

17 Q. Other than Mr. Paresh Patel, as we sit here
18 today, can you give me the names of any other
19 divisional managers from January 1, 2013, to present?

20 A. No.

21 Q. As we sit here today, can you give me the
22 names of any other regional managers other than
23 Ms. Bhatt, Mr. Chung -- Ms. Bhatt and Mr. Chung?

24 A. Scott Voigt is my current regional since I'm
25 in a different market.

1 Q. How do you spell Voigt?

2 A. V-o-i-g-t.

3 Q. Other than Mr. Voigt, Mr. Chung and
4 Ms. Bhatt, do you know the names of any other regional
5 managers in United States?

6 A. No.

7 Q. Other than Ms. Fisher, Ms. Dabney and
8 Mrs. Neil, do you know the names of any other market
9 managers in the United States?

10 A. I've worked under Mr. Paul Dukes.

11 Q. Anyone else?

12 A. No.

13 Q. Other than Ms. Dabney, Ms. Neil, Ms. Fisher
14 and Mr. Dukes, have you ever spoken to any other
15 market managers?

16 A. I have currently. Mr. Craig Crawford.

17 Q. Is that your current market manager?

18 A. He will be soon, yes.

19 Q. Other than Mr. Crawford, Mrs. Neil,
20 Ms. Dabney, Ms. Fisher and Mr. Dukes, have you ever
21 spoken to any other market managers?

22 A. No.

23 Q. Other than -- well, strike that. Other than
24 Mr. Patel, you've never spoken to any divisional
25 managers; correct?

. 60

1 A. Yes, that's correct.

2 Q. Other than Mr. Chung, Ms. Bhatt -- sorry --
3 and Mr. Voigt, you haven't spoken to any other
4 regional managers; correct?

5 A. That is correct. I do want to correct.
6 Mr. Voigt, I've never spoken to him.

7 Q. Okay.

8 A. Okay? He just became my recent regional.

9 Q. So the two regional managers you've spoken to
10 are Mr. Chung and Ms. Bhatt?

11 A. That's correct.

12 Q. Looking at your declaration, Ms. Nguyen, does
13 this declaration include the reasons that you believe
14 that taking the training course was mandatory?

15 A. Yes. I do believe that, yes.

16 Q. Okay. And were you careful in reviewing this
17 declaration to make sure that it included complete
18 information as to why you believe the -- taking the
19 training course was mandatory?

20 A. Yes.

21 Q. And is this declaration based on your
22 individual experience?

23 A. That is correct.

24 Q. A couple other background questions. Have
25 you ever -- sorry. Do you know how many pharmacies

1 the training course is mandatory?

2 A. There's a policy that it's preferred. So how
3 we would read that, even if I was a pharmacist to
4 apply, it would be mandatory.

5 Q. Okay. So let's focus on a couple of things.
6 In your mind, is there a written policy that indicates
7 that taking the training course is mandatory?

8 A. I don't recall a written policy that
9 specifically directly says it is mandatory, but that
10 doesn't mean that Wal-Mart is indicating it's not.

11 Q. Okay. In your mind, is there an indirect
12 written policy that states that taking the training
13 course is mandatory?

14 A. Like I mentioned earlier, there is a policy
15 for anyone that needs to be hired by Wal-Mart, it does
16 say preferred.

17 Q. And, in your mind, how does that indicate
18 that taking the training course is mandatory?

19 A. Well, not just in my mind in general, but I
20 would say for all pharmacy Wal-Mart -- for pharmacists
21 at Wal-Mart that to be hired as an employee for
22 Wal-Mart pharmacy, they would want you to basically be
23 certified.

24 Q. Okay. I understand those are the words of
25 it. But my question is: How, in your mind, does

1 that -- strike that.

2 This preferred qualification applies to new
3 hires; right?

4 A. New hires or even now, I would say. So the
5 ones that -- from what I've experienced in floating
6 around, the ones that have not been certified are
7 slowly getting certified now because it's -- they're
8 being pressured, and I see it.

9 Q. Okay. And I'm -- right now I want to focus
10 on what you think constitutes a written policy by
11 Wal-Mart indirectly stating that the -- taking the
12 training course is mandatory or becoming, you know,
13 immunized -- a certified immunizer is mandatory.

14 Are you with me?

15 A. Yes.

16 Q. Okay. In your mind, the written policy that
17 indirectly indicates that is the fact that for new
18 hires, the -- being immunization-certified is a
19 preferred qualification; right?

20 A. So for the new hires, how I would interpret
21 it is they would -- even though it's typed as
22 preferred, they would want a new hire that's already
23 certified. And on top of that, the current ones that
24 are currently working for Wal-Mart and are not,
25 they're slowly being pressured to basically be

1 certified as well.

2 Q. Okay. I want to make sure -- because I'm
3 trying to focus on what you think the written policy
4 is. Now, you're saying about pressure now.

5 But in your mind, even -- by the way, I think
6 you -- I know you did. You testified earlier that you
7 thought that the written indirect policy was this new
8 hire, you know, say, job postings listing it as a
9 preferred qualification.

10 Is that, in your mind, the written policy?

11 A. That is, in my mind, the written policy.

12 Q. Okay. And you mentioned this policy --
13 this -- job postings in your declaration at
14 Paragraph 9, and then it refers to Exhibit 5 of the
15 second amended complaint. So I want to make sure
16 we're talking about the same document.

17 A. Which one? This one?

18 MR. YSLAS: So I'm going to -- I'm handling,
19 for the record, the exhibits right now.

20 Q. I am handling, and I'll hand to you,
21 Exhibit 7 from Ms. Nikmanesh's deposition in the
22 common exhibits we've referred to, and these are the
23 Exhibits 1, 2, 4-9 and 11 through 13 to plaintiffs'
24 second amended complaint, which were refiled per court
25 order on May 12, 2015. I'm going to turn -- it's

1 marked at the bottom as 7-23.

2 Is this the kind of job posting you're
3 referring to where at the bottom it lists as a
4 minimum -- a preferred qualification being
5 immunization-certified?

6 A. This -- which -- this is not -- this is just
7 a description of what a manager -- oh, "Preferred
8 Qualifications." I see. Okay. Yes. Yes.

9 Q. And this is the kind of job posting you're
10 referring to which is the indirect policy of Wal-Mart
11 that the training course is mandatory --

12 A. Yes.

13 Q. -- correct?

14 A. Yes.

15 Q. Okay. Ms. Nguyen, when you took the training
16 course in February 2014, did you receive any
17 continuing education credit for it?

18 A. I did.

19 Q. How much continuing education credit did you
20 receive?

21 A. That should be worth 12 CE, continuing
22 education, units.

23 Q. What is the continuing education requirement
24 for you for being a pharmacist?

25 A. Every 2 years they require 30 hours to renew

1 our license.

2 Q. And when is the 2-year mark for you?

3 A. For me it's 2017.

4 Q. What month?

5 A. February.

6 Q. Okay. And your previous deadline was
7 February --

8 A. '15.

9 Q. -- 2015; correct?

10 A. Yes.

11 Q. Okay. And you took the course in February
12 2014; right?

13 A. Yes.

14 Q. At the time you took the course in February
15 2014, had you completed any of the 30-hour requirement
16 for CE?

17 A. Yes.

18 Q. How many hours had you prior to taking the
19 training course?

20 A. Oh, by -- let me repeat. Let me rephrase
21 that. By the 15th I've completed 30 hours.

22 Q. Okay. Let's -- let me just back up for a
23 second.

24 A. Okay.

25 Q. As of February 2013, by February 2015 you had

1 to do 30 hours for CE credit; right?

2 A. Yes.

3 Q. And that was to maintain your license as a
4 pharmacist; correct?

5 A. Yes.

6 Q. And as of February 2014, just prior to the
7 time you took the training course, had you completed
8 any of the 30 hours of CE that you needed to maintain
9 your license?

10 A. Just a few hours.

11 Q. Approximately how many?

12 A. Probably three, four.

13 Q. So by taking the immunization course, you
14 received a benefit of getting CE credit; correct?

15 A. Yes.

16 Q. You said 12 hours. Wasn't the course a total
17 of 20 hours?

18 A. 20 hours is how long it took me. So 12 hours
19 is the actual what they consider, which is only take
20 12 hours, but it actually took a lot longer.

21 Q. How did it take longer? What do you mean?

22 A. Longer to complete the home study course.

23 Q. How long did it take to do the home study?

24 A. About 20 hours.

25 Q. How long did it take to do the live -- yeah,

1 than Wal-Mart administer immunizations?

2 A. Yes.

3 Q. Do you know if it's a requirement as a
4 minimum qualification by other retailers?

5 A. I don't have that answer.

6 Q. Is it fair to say that becoming an
7 immunization -- strike that.

8 Is it fair to say that becoming immunization-
9 certified made you more marketable for getting jobs
10 with other retailers?

11 A. I wouldn't say that.

12 Q. Why not?

13 A. I don't think it should be based on whether
14 we're certified or not.

15 Q. You don't think it should, or you don't think
16 it is?

17 A. I don't think it is or I -- both. I don't
18 think it should or is.

19 Q. Because you don't know if it's required by
20 other retailers; right?

21 A. Right. I know other retailers do it. I
22 don't know if it's required.

23 Q. Do you know what percentage of pharmacists --
24 Wal-Mart pharmacists have taken the training course?

25 A. I don't know based on percentage.

1 Q. Do you have any way of estimating?

2 A. No.

3 Q. Do you have any way of estimating what
4 percentage of pharmacists have taken the training
5 course in California?

6 A. No.

7 Q. Do you have any way of estimating the
8 percentage of pharmacists that have taken the training
9 course in Southern California?

10 A. No, I do not.

11 Q. Do you know any pharmacists employed by Wal-
12 Mart that have not taken the training course or are
13 not immunization-certified?

14 A. As of now, no.

15 Q. So, in other words, every pharmacist you know
16 that works for Wal-Mart is immunization-certified?

17 A. Every pharmacist that I know that I've --
18 worked in that market or worked at that store is
19 immunized -- or are immunized.

20 Q. Okay. And as we sit here today, you can't
21 think of one immunization -- sorry.

22 As we sit here today, you can't think of one
23 pharmacist that you know that's employed by Wal-Mart
24 that is not immunization-certified; is that right?

25 A. That is correct.

1 Q. Do you know what percentage of pharmacists
2 for Wal-Mart are hourly, that is, salaried -- I'm
3 sorry.

4 Do you know what percentage of pharmacists
5 for Wal-Mart are hourly, that is, nonexempt?

6 A. That is not -- every single one of us.

7 Q. Every single one of you in California you
8 mean?

9 A. Right.

10 Q. Okay. Do you have any idea of what
11 percentage of pharmacists are salaried or exempt
12 outside of California?

13 A. Would be my friend Tom, who works in
14 Missouri.

15 Q. Other than Tom -- I'm not even really asking
16 about Tom.

17 What I'm asking is: Outside of California,
18 do you have any idea what percentage of Wal-Mart
19 pharmacists are salaried-exempt?

20 A. No, I do not know.

21 Q. You really don't know what the practices are
22 outside of California; right?

23 A. That is correct.

24 Q. This policy that you have in your mind that
25 taking the training course was mandatory, even if

1 conveyed indirectly, do you know who developed this
2 policy?

3 A. I don't know in particular the names, but I
4 can say, like, the person -- upper management or just
5 Wal-Mart in the Health and Wellness.

6 Q. You're speculating that it's somebody in
7 upper management in Health and Wellness; is that
8 right?

9 A. I mean, that's all I can say. I don't --
10 that's correct.

11 Q. You really don't know?

12 A. I don't -- I don't have names, no.

13 Q. Okay. But you don't have any specific
14 information about how this policy was developed;
15 correct?

16 A. Yes, that is correct.

17 Q. And other than your own personal individual
18 experience, you don't have any personal knowledge
19 about how this policy was communicated; correct?

20 A. It was -- I did hear that it was communicated
21 once at a conference call by Ms. Dabney.

22 Q. Other than hearing about what Ms. Dabney said
23 in your own conversations, though, outside of Southern
24 California you really have no idea how this policy
25 that taking the training course is mandatory was

1 communicated; correct?

2 A. Outside of California, that is correct.

3 Q. Outside of --

4 A. Outside of Southern California, that's
5 correct.

6 Q. Okay. You don't know when this policy was
7 developed; correct?

8 A. That is correct.

9 Q. You don't know the specific people that
10 developed the policy; correct?

11 A. That is correct.

12 Q. You don't know how divisional managers
13 conveyed to regional managers this policy; correct?

14 A. That is correct.

15 Q. You don't know how regional managers conveyed
16 this policy about being mandatory, the training
17 course, to market managers; correct?

18 A. Based on just physical evidence or just
19 direct conversations? Can you please specify? Or
20 just in general?

21 Q. Outside of your own personal knowledge
22 regarding communications that you've actually
23 witnessed and overheard about in Southern California,
24 you have no idea how regional managers told market
25 managers about this policy that you allege that the

1 training course is mandatory; correct?

2 A. That is correct.

3 Q. Did you ever tell those that reported to you
4 that taking the training course was mandatory?

5 A. I told my staff that -- actually, besides
6 telling that it was going to be a mandatory, they
7 already knew.

8 Q. Okay. I'm not asking about what they know in
9 this question.

10 A. Okay.

11 Q. I'm asking about what you said to them.

12 A. I basically conveyed the message to them that
13 it's something that they want and to -- just for the
14 business. Even though it started off as just one per
15 store or per pharmacy, it eventually, obviously,
16 increased, and we talked about it.

17 Q. Okay. And you talked about those in
18 individual conversations or all together in one
19 conversation?

20 A. Individuals.

21 Q. Okay. And each conversation you had was
22 separate; right?

23 A. That is correct.

24 Q. And those conversations were unique? In
25 other words, they weren't the exact same conversation

1 you had with each one of your subordinates; correct?

2 A. It wasn't, like, the exact same words, but it
3 was exact -- it was the general same idea.

4 Q. Okay. And it was based on your
5 understanding; correct?

6 A. My -- yes.

7 Q. Did anyone ever tell you that taking -- if
8 you didn't take the training course, your hours would
9 be reduced?

10 A. No one told me directly, but I have heard
11 from other colleagues.

12 Q. Okay. So I want to focus on your individual
13 experience right now. Okay?

14 A. Okay.

15 Q. No one ever told you that -- including
16 management, of course. But nobody ever told you that
17 if you didn't take the training course, your hours
18 would be reduced; correct?

19 A. Not to me personally, no.

20 Q. Nobody, including in management, ever told
21 you that you'd be transferred to a different pharmacy
22 if you didn't take the training course; correct?

23 A. No.

24 Q. Is that correct?

25 A. That is correct.

1 LOS ANGELES, CALIFORNIA

2 FRIDAY, JUNE 26, 2015; 1:11 P.M.

3 --o0o--

4

5 ANNA LINH NGUYEN,

6 having been previously first duly

7 sworn, was examined and testified

8 further as follows:

9

10 THE VIDEOGRAPHER: We're back on the record.

11 The time is 1:11.

12

13 EXAMINATION (Continued)

14 BY MR. YSLAS:

15 Q. All right. Ms. Nguyen, before the break we
16 talked extensively about communications regarding what
17 caused you to believe taking the training course was
18 mandatory.

19 I want you to just tell me in your own words:
20 What caused you ultimately to conclude that taking the
21 training course was mandatory?

22 A. Well, I mean, first it started off as they
23 need one pharmacist per store, to start with, to do --
24 to be certified, and just the communication that we
25 had in the conference call for how immunizations will

1 increase our business and help bring in more customers
2 and satisfy, like, their needs to get vaccinations, I
3 mean, that alone just tells me that Wal-Mart is trying
4 to extend that program, and they want all of us to be
5 certified.

6 Q. Now, the conference calls that you just
7 mentioned about increasing business, when was the
8 first such conversation that occurred?

9 A. The first conversation was -- I don't know
10 the exact date or month. I mean, again, we have
11 conference calls once a week. But it was with
12 Stephanie Beauchene. She was my market director that
13 started off initiating about the immunization program.

14 Q. And were these calls in 2014?

15 A. Yes, these calls were in 2014.

16 Q. And you don't recall the approximate month?

17 A. Month? In terms of maybe just talking about
18 how the program will start, exactly when the date will
19 start, I don't recall. But I would say around 2013,
20 beginning 2014.

21 Q. You mean the end of 2013 or early 2014?

22 A. Yes. Sorry. End of 2013.

23 Q. And this is when she held conference calls
24 with -- covering the market that she was responsible
25 for, which at the time was -- was it Market 70 or 270?

1 A. She was at the time covering for both.

2 Q. Okay. And approximately how many conference
3 calls did she have where she discussed this?

4 A. I can't really say. But we have conference
5 calls once a week. I don't know the number of times
6 we talked about immunizations. Basically I can't
7 total the number of conference calls we had solely
8 just talking about immunization or just mentioning it.

9 Q. And when -- who discussed having one
10 pharmacist per store?

11 A. I had that discussion -- not personally, but
12 just within the market -- was with Stephanie Fisher --
13 or Stephanie Beauchene.

14 Q. I'm sorry. Did you have this conversation
15 directly with Stephanie Fisher or not?

16 A. No, not directly. It was amongst the team,
17 the market.

18 Q. Who told you that one pharmacist per store
19 was going to be -- was it -- strike that.

20 So Ms. Fisher never directly told you that
21 there needed to be one pharmacist per store; correct?

22 A. Not directly to me personally, but directly
23 to the whole team.

24 Q. And what team?

25 A. Her -- in her market. So at the time being,

1 I was in her market, which was 270.

2 Q. And did you -- were you not on a call where
3 you were told this happened or -- I'm not following.

4 You didn't personally hear her say this. How
5 did you come to learn of it?

6 A. No, I did hear her. I was on the conference
7 call. I was manager at the time. So I was on the
8 conference call for that matter.

9 Q. And on the conference call that you were on,
10 Ms. Fisher said there needed to be one certified
11 immunizer pharmacist per store?

12 A. Yes.

13 Q. Did she say there needed to be or that it was
14 a goal or something different?

15 A. I'm not too sure, to be quite honest. From
16 what I understand and from what I recall from the
17 conference call, it was we need to have -- we need to
18 have one pharmacist per store -- one certified
19 pharmacist per store.

20 Q. Okay. So is it fair to say, then, she wasn't
21 saying -- let me be super clear here.

22 Ms. Fisher wasn't saying that every single
23 pharmacist had to become certified; she was saying at
24 least one per store had to become certified; right?

25 A. Yes. To start off with the immunization

1 program, she said at least one per store.

2 Q. Didn't that mean to you, then, that not every
3 pharmacist had to become certified? Correct?

4 A. No, not necessarily. Because once we knew
5 this program was going to be initiated, it would come
6 to that point where Wal-Mart's going to want every
7 pharmacist to be certified.

8 Q. Okay. But nobody ever told you that; right?

9 A. Not directly. But indirectly we all knew, as
10 a group.

11 Q. How did you all know as a group?

12 A. Because they know that -- I mean, Wal-Mart
13 knows immunization is a new program for them. It's
14 going to be something big that will help just with the
15 company or with the pharmacy department. I mean,
16 we're pretty much the only ones that haven't done
17 immunizations, let's say, compared to other retailers.
18 So that alone, we just knew that it was going to be to
19 that point that everyone's going to have to be
20 certified, and till this day it seemed like that's the
21 case.

22 Q. Okay. So, basically, you're reaching your
23 conclusion based on the circumstances as you're
24 interpreting them; right?

25 A. Yes.

1 Q. Okay. And the circumstances that you're
2 aware of, based on your own experience, is limited to
3 the Southern California market; right?

4 A. Yes.

5 MR. PARCELLS: Excuse me. I think that
6 misstates her testimony. I thought there was some
7 evidence of a St. Louis market as well that she had
8 talked about. I could have that wrong but I -- I'm
9 not sure that that --

10 THE WITNESS: I did have a -- like, a small
11 conversation with him, but that was just, yeah, what
12 they're initiating on their side.

13 BY MR. YSLAS:

14 Q. Okay. But you don't really know what was
15 going on in that market; right?

16 A. I don't. But I just know that they were
17 initiating the same protocol, like the immunization.

18 Q. You knew that they were -- people were
19 becoming able to take the immunization training
20 course; right?

21 A. I don't know exactly in terms of the
22 immunization course over in Missouri, but I knew that
23 they were initiating the immunization program, so --
24 to the point where they would have to do it. Now, I
25 don't know who has been certified, who's not.

1 discussing with my colleagues.

2 Q. Okay. And those colleagues being in Southern
3 California; right?

4 A. That is correct.

5 Q. Okay. Now, looking at Paragraph 11, you
6 refer to Exhibit 8 of the second amended complaint,
7 which is the standard operating procedures for
8 providing immunizations.

9 There's nothing in that document that states
10 that taking the immunization training course was
11 mandatory; correct?

12 A. That's correct. It's very clear it doesn't
13 say mandatory.

14 Q. Okay. And, incidentally, the job
15 descriptions in 6 and 7, you don't know -- Exhibits 6
16 and 7, you don't know who authored those documents;
17 correct?

18 A. I do not.

19 Q. And you don't know what the intent of that
20 author was; correct?

21 A. I -- that's correct.

22 Q. Okay. And you don't know who authorized
23 exhibit -- strike that.

24 You don't know who authored Exhibit 8, the
25 standard operating procedures; correct?

1 A. That is correct.

2 Q. And you don't know what the intent of that
3 author was; correct?

4 A. Well, if there is an SOP of anything, their
5 intent to make it clear this is the procedure that we
6 have to follow when we --

7 Q. All right. It's the procedure you have to
8 follow, but it's not saying anything about taking
9 the -- whether or not the immunization training course
10 is mandatory; correct?

11 A. But you don't have to say it or -- once it's
12 established in SOP guideline or any sort of guideline,
13 it's established that this is what they want us to do.
14 So whether it doesn't state in the SOP that it's
15 mandatory, it's pretty much indirectly saying, Get it
16 certified, and get this -- and follow these
17 directions.

18 Q. Okay. Now, you earlier testified that one
19 pharmacist had to be -- that Ms. Fisher had said one
20 pharmacist needs to be certified; correct?

21 A. That is correct.

22 Q. Okay. So it's possible that you'd have one
23 certified pharmacist who would use those standard
24 operating procedures, and the others that are working
25 in the pharmacy wouldn't; is that true?

1 manager, they're relaying that message to us.

2 Q. Okay. But the -- when you say "Wal-Mart," I
3 want to make sure: The market managers that
4 communicated to you were Stephanie Fisher and MaryAnn
5 Dabney; correct?

6 A. Yes, that is correct.

7 Q. Okay. So when you use the word "Wal-Mart
8 strongly encouraged," you are referring to Ms. Dabney
9 and Ms. Fisher; correct?

10 A. I would say they're included. But when I
11 mean "Wal-Mart," I mean Wal-Mart as a company, as a
12 whole. So whoever is above the market directors, the
13 regionals, divisionals, vice president, president, I
14 mean, they all have a say in how they're going to
15 initiate a program and so forth.

16 Q. Okay. Ms. Nguyen, but you've already
17 testified that you have absolutely no idea how the
18 program was developed, who developed it, how it was
19 developed or what was said.

20 So my question is -- I'm trying to make sure
21 I understand as to your personal, not your
22 speculation -- who at Wal-Mart strongly encouraged its
23 pharmacists to administer immunizations?

24 A. In terms of direct supervising, it would be
25 my market director.

1 Q. Not just direct supervising, but direct
2 personal knowledge, your knowledge is the market
3 managers you reported to, Ms. Fisher and Ms. Dabney;
4 correct?

5 A. Yes.

6 Q. Now, in Paragraph 15 you refer to an e-mail
7 that Ms. Dabney wrote on November 10, 2014.

8 Do you see that?

9 A. Yes.

10 Q. Okay. And you attach as Exhibit 1 to your
11 declaration -- actually, it's an unsealed exhibit;
12 therefore, it's attached to your actual declaration.

13 A. Okay.

14 Q. It should be right at the last page, this
15 particular one.

16 A. Okay. I see it.

17 Q. Okay. So that e-mail is dated November 10,
18 2014; correct?

19 A. Yes.

20 Q. And you had taken the immunization training
21 course eight months earlier; correct?

22 A. Yes.

23 Q. Okay. So there's nothing in that e-mail that
24 caused you to take the training course, right, because
25 you'd already taken it?

1 A. I've already -- correct, I've already taken
2 it at that point.

3 Q. And in Paragraph 16 you refer to an e-mail
4 dated December 12, 2014, and that's Exhibit 2, which
5 actually is under seal. So I'll point this one out to
6 you here.

7 Do you see this?

8 A. Yes.

9 Q. Okay. So this one by Ms. Dabney is ten
10 months after you took the immunization training
11 course; right?

12 A. That is correct.

13 Q. Okay. So there's nothing in this e-mail that
14 caused you to feel pressured to take the training
15 course because you'd already taken it; right?

16 A. In that particular context, yes, that is
17 correct.

18 Q. As of December 12, 2014, do you know if any
19 of the people on that e-mail had not taken the
20 immunization training course by that point?

21 A. I do not know.

22 Q. Okay. As of November 10, 2014, looking at
23 Exhibit 1, do you know if any of the people in that
24 e-mail had not taken the training course?

25 A. I do not know.

1 Q. Paragraph 17 -- it's also part of
2 Exhibit 2 -- you refer to an e-mail from Ms. Bhatt
3 dated December 12, 2014.

4 Do you see that?

5 A. Yes, I do.

6 Q. Okay. At that point it had also been ten
7 months since you'd taken the immunization training
8 course; correct?

9 A. That is correct.

10 Q. Okay. So there's nothing in Ms. Bhatt's
11 e-mail that made you feel pressured in some way that
12 caused you to take the training course; right?

13 A. No, because I've already taken it by that
14 point.

15 Q. Do you have any idea if any of the recipients
16 of that e-mail had not taken the training course by
17 that point?

18 A. I do not know.

19 Q. Paragraph 19, you refer to an e-mail which is
20 one of the ones under seal, Exhibit 3. Actually --
21 sorry. It's not an e-mail. It's a -- notes of a
22 conference call.

23 Do you see that?

24 A. Uh-huh -- yes, I do.

25 Q. Yes?

1 A. Yes.

2 Q. And the date of that conference call was
3 October 21, 2014; correct?

4 A. Yes.

5 Q. Okay. And that was eight months after you'd
6 taken the immunization training course; right?

7 A. Yes.

8 Q. So there's nothing that happened in that
9 conference call that led you -- sorry. Strike that.

10 There was nothing in that conference call
11 that caused you to feel pressured in a manner that --
12 to take the training course; correct?

13 A. That's correct.

14 Q. Who else was on that call?

15 A. All the managers in Market 70.

16 Q. At the time of that conference call, had all
17 those market managers -- sorry -- had all those
18 managers in Market 70 already taken the training
19 course?

20 A. From my understanding, yes.

21 Q. And then in Paragraph 20 of your declaration
22 you refer to an e-mail by Ms. Dabney dated January 12,
23 2015.

24 Do you see that?

25 A. Yes, I do.

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1 Q. And that was dated -- this is also under
2 seal. So turning your attention to Exhibit 4, which
3 is dated January 12, 2015, this is an e-mail from
4 Ms. Dabney to you and 20 other pharmacists; right?

5 A. Yes.

6 Q. And this was a status update of -- on a
7 contest who could administer the most immunizations?

8 A. Yes.

9 Q. At that point you'd already taken the
10 immunization training course; right?

11 A. Yes.

12 Q. So nothing in this e-mail caused you to take
13 the training course; correct?

14 A. That is correct.

15 Q. And everybody on that e-mail chain had
16 already taken the -- or do you know -- the training
17 course at that point?

18 A. By that point I believe majority -- I would
19 say 90 percent, if we're going to give a percentage,
20 have already taken the training course.

21 Q. Okay. So there were pharmacists, in fact,
22 who had not taken the training course as of
23 January 2015; right?

24 A. I -- yes.

25 Q. Okay. Is there some --

1 A. I'm not 100 percent sure.

2 Q. Okay. So earlier I think I asked you about
3 this, and I thought you said you didn't know anyone
4 who had taken the training course.

5 Does this help refresh your recollection? Is
6 there anyone on this list that had not taken the
7 training course?

8 A. No, I do remember that. By this time I
9 believe -- from what I understand -- or from what I
10 know, I believe at that point the majority had.

11 Q. Is there anybody on this list as of
12 January 2015 who had not taken the immunization
13 training course?

14 A. On this list? List of --

15 Q. The recipients of the e-mail of January 12,
16 2015, which is Exhibit 4 to your declaration.

17 A. Based on looking at this list, it seems like
18 everyone has taken it. But there could be a staff or
19 two, like they're third floaters, I'm not too sure of.

20 Q. Okay. In Paragraph 21 you say: It was
21 emphasized time and time again to me, as well as all
22 the other Pharmacists in my district, that
23 administering immunizations was critical to our
24 success, that it is extremely important to Wal-Mart.
25 Immunizations are very profitable and, therefore,

1 being immunization-certified was not an option.

2 Do you see that?

3 A. Yes, I do.

4 Q. You were referring to communications that
5 came from Ms. Dabney and Ms. Fisher; correct?

6 A. More with Ms. Dabney.

7 Q. Okay. So in Paragraph 21 you're referring to
8 Ms. Dabney; correct?

9 A. That is correct.

10 Q. Okay. Now, Paragraph 22 you say, "During a
11 conference call with Bhatt, I was told, along with
12 20 other Pharmacists on the conference call, that we
13 would not get paid for the home study" --

14 Do you see that?

15 A. Yes, I do.

16 Q. Okay.

17 -- "and test portions of the Training Course,
18 although Wal-Mart would pay for the actual cost of the
19 Training Course itself and the live classroom
20 portion."

21 My question is: When did that call with
22 Ms. Bhatt take place?

23 A. The one with Ms. Bhatt -- there might be a --
24 it should be, also, Anthony. Because when Anthony and
25 Ms. Bhatt -- Ms. Bhatt replaced Anthony. So I don't

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1 know the exact date, but I know with Anthony Chung,
2 when the program initiated, or started, we did ask
3 and -- more like I -- we -- as a market, we asked on a
4 conference call with Stephanie, and her regional was
5 with Anthony. And at that point her answer was no, we
6 do not get paid for that.

7 Q. Okay. So I want to make sure I understand.

8 Looking at Paragraph 22 --

9 A. Okay.

10 Q. -- is that a mistake in saying "during a
11 conference call with Bhatt"? Did you mean to say
12 Mr. Chung?

13 A. Mr. Chung and Ms. Beauchene, yes.

14 Q. Okay. So -- and I'm not -- I mean, I'm
15 asking, you know.

16 A. Okay.

17 Q. Is Paragraph 22 incorrect? When you say
18 "during a conference call with Bhatt," did Ms. Bhatt
19 ever have a conversation that you're describing in
20 Paragraph 22, or is that -- did you mean to say
21 Mr. Chung and/or Ms. Dabney or Fisher?

22 A. I meant to say Mr. Chung and Ms. Fisher.

23 Q. Okay.

24 A. Ms. Bhatt, she just -- she came on board --

25 Q. Right.

1 A. -- but then I wasn't under her -- I got
2 realigned. I was probably under her market at the
3 time, but at the same time I'm not sure what
4 conference call she -- because I know for sure it was
5 Anthony and Stephanie.

6 Q. Okay. And the conversation you are referring
7 to in Paragraph 22 really is with Ms. Fisher and
8 Mr. Chung; correct?

9 A. Right.

10 Q. Okay. And this is before you took the
11 immunization training course; right?

12 A. This was about during the time we were taking
13 it.

14 Q. Okay. So about February 2014?

15 A. Right.

16 Q. Okay. And describing what you'd be paid for,
17 but in this conversation whether or not it was
18 mandatory was not discussed; is that right?

19 A. Whether it was mandatory?

20 Q. Right.

21 A. Within -- in 2014 with Ms. Fisher and
22 Mr. Chung?

23 Q. I want to take you to the conversation that
24 you're describing in Paragraph 22.

25 Are you with me?

1 A. Okay.

2 Q. Which you said is in about February 2014.

3 Okay?

4 A. Okay.

5 Q. In that conversation I do see you're
6 describing what you'd get paid for as described now --
7 as corrected by Ms. Fisher and Mr. Chung.

8 But what I'm asking you is: In that
9 conversation you didn't discuss whether or not taking
10 the training course was mandatory or not; right?

11 A. The -- that is correct.

12 Q. Okay. Mr. Chung never made any statements to
13 you that taking the training course was mandatory;
14 correct?

15 A. Not directly.

16 Q. Ms. Bhatt never made any statements to you
17 that taking the training course was mandatory;
18 correct?

19 A. Again, not directly.

20 Q. Looking at Exhibit 3 to the second amended
21 complaint -- so this is going to be a little
22 different. If you'd hand back the confidential
23 documents, which is the thinner binder.

24 A. This one right here?

25 Q. I think it's that one, yeah. These were --

1 this is Exhibit 3. So this is Exhibit 8 to the
2 sealed -- which are sealed in the confidential binder,
3 Exhibit 8 to Ms. Nikmanesh's deposition, and it is
4 Exhibit 3 to the second amended complaint. And it's
5 the Pharmacist Administered Immunization Delivery, or
6 PAID, toolkit.

7 There's nothing in that document that states
8 that the -- taking the immunization training course is
9 mandatory; correct?

10 A. Again, it doesn't say the word "mandatory"
11 or -- but having -- when this is out, it's pretty
12 clear this is --

13 Q. Okay. So it's your testimony that the
14 existence of that document leads you to believe that
15 taking the training course is mandatory; right?

16 A. That's correct.

17 Q. It's nothing in the words of it; correct?

18 A. That is correct.

19 Q. Okay. Do you know who authored the PAID
20 toolkit?

21 A. I don't.

22 Q. Do you know -- do you have any idea what the
23 intent of the PAID toolkit was, other than to tell
24 people the procedures for administering immunizations?

25 A. I -- no, I don't.

1 REPORTER'S CERTIFICATE

2

3 I, Jan M. Roper, a Certified Shorthand
4 Reporter No. 5705, do hereby certify:

5 That, prior to being examined, the witness
6 named in the foregoing deposition, ANNA LINH NGUYEN,
7 was by me duly sworn to testify the truth, the whole
8 truth, and nothing but the truth.

9 That said deposition was taken down by me in
10 shorthand at the time and place therein named and
11 thereafter transcribed under my direction, and I
12 hereby certify that the foregoing deposition is a true
13 and correct transcript of my shorthand notes so taken.

14 I certify that a request has been made by, or
15 on behalf of, the witness to review, correct and sign
16 the transcript of these proceedings.

17 I further certify that I am neither counsel
18 for nor related to any party to said action nor in
19 anywise interested in the outcome thereof.

20 IN WITNESS WHEREOF, I have hereunto
21 subscribed my name this 27th day of June, 2015.

22

23

24

JAN M. ROPER, RPR, CSR NO. 5705

25

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EXHIBIT E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

AFROUZ NIKMANESH, ELVIS	)	CASE NO.:
ATENCIO, ANNA NGUYEN, AND	)	8:15-cv-00202 AG-JCG
EFFIE SPENTZOS, on behalf of)	
themselves, the general)	
public, and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
WAL-MART STORES, INC., a)	
Delaware corporation, and)	
WAL-MART ASSOCIATES, INC., a)	
Delaware corporation, and)	
DOES 1 through 10, inclusive,)	
)	
Defendants.)	
_____)	

VIDEO DEPOSITION OF ELVIS ATENCIO
Tuesday, June 30, 2015
Los Angeles, California

Reported By:
Jan M. Roper, RPR,
CSR No. 5705
File No.: 150630JR

1 A. Yes. Yeah, well, to my knowledge.

2 Q. And just -- it hasn't been a problem so far,
3 but let's try -- just a reminder to let me finish my
4 question before you give an answer.

5 When you were a market manager -- or a
6 district manager -- and now it's termed a market
7 manager -- from 2002 to 2004, do you remember the area
8 that you supervised?

9 A. Yes.

10 Q. What was it?

11 A. It was the south San Diego area.

12 Q. And did it have a market number or an area
13 number?

14 A. It probably did. I don't recall the number.

15 Q. And what -- do you recall what stores
16 specifically you supervised?

17 A. More or less, yes.

18 Q. What were they?

19 A. The Chula Vista stores, some of the San Diego
20 stores, the El Cajon stores, and the stores out in the
21 Imperial Valley.

22 Q. Okay. And when you were a district manager,
23 was your authority limited to supervising those
24 stores?

25 A. Yes. I did have to cover some areas. And

1 Q. Approximately how many stores?

2 A. Approximately, I'll say, in between 12 to 14.

3 That's roughly.

4 Q. And was Ms. Jones' authority limited to those
5 12 to 14 stores?

6 MR. EPSTEIN: Objection to the extent it
7 calls for speculation. Lacks foundation.

8 If you know, you can answer.

9 THE WITNESS: No knowledge.

10 BY MR. YSLAS:

11 Q. Okay. So as we sit here today, you don't
12 know the extent of Ms. Jones' authority as a market
13 manager; correct?

14 A. I don't know what her terms were with her
15 supervisor. So it would be just an estimate for me.

16 Q. Okay. Well, what I'm asking you is: Do you
17 know the stores that she supervised?

18 A. I knew the stores that she was covering, yes.

19 Q. Okay. And were those stores the ones that
20 you've just mentioned, the 12 to 14 stores in
21 San Diego, Chula Vista, El Cajon and the Imperial
22 Valley?

23 A. Yes.

24 Q. As we sit here today, do you have any reason
25 to believe she had authority over any other stores

1 A. Both districts, I would estimate about 20
2 stores. Probably a little bit more than that.

3 Q. How many markets were in San Diego?

4 A. Generally two markets.

5 Q. And beyond San Diego, do you know any of the
6 other markets that Mr. Chung supervised?

7 A. I believe, like I mentioned before, there
8 were some in Orange County. There were some in the
9 Inland Empire. And he had some supervision, I
10 believe, in the L.A. area also.

11 Q. Okay. But you don't know the specific
12 stores; correct?

13 A. No.

14 Q. And Ms. Bhatt, was her -- as a regional
15 manager, did she supervise the same stores that
16 Mr. Chung supervised?

17 A. I believe so.

18 Q. And those stores were in Southern California;
19 correct?

20 A. Yes.

21 Q. So Ms. Bhatt's authority was limited to
22 stores in Southern California, to your knowledge;
23 correct?

24 A. To my knowledge, yes.

25 Q. Now, while Mr. Michael Moore was the

1 Q. Okay. So you don't have personal knowledge
2 about the substance of any of those personal
3 conversations that Mr. Othman may have had with any
4 regional supervisor, for example, Mr. Chung or
5 Ms. Bhatt; right?

6 A. Correct.

7 Q. Now, as of late November 2013, when you
8 enrolled in the training course, had anyone told you
9 at that time that taking the training course was
10 mandatory?

11 A. In the conference call with Khoi Le when he
12 first rolled out the program.

13 Q. And when was that conference call?

14 A. It was either in October or November of 2013,
15 my estimation.

16 Q. Okay. And at that time he was a market
17 manager over a market different than the one you were
18 working in?

19 A. Yes. He was covering our area also.

20 Q. This is the conversation that you were
21 referring to in Paragraph 12 of your declaration --
22 Paragraphs 12 and 13?

23 A. Let me take a look.

24 Correct.

25 Q. And at the time he was temporarily your

1 market manager; is that correct?

2 A. At that time he was covering our district.

3 Q. And at the time, he was the market manager
4 then that you reported to; correct?

5 A. Correct.

6 Q. Okay. Other than that statement by Mr. Le in
7 that conversation, prior to the time that you enrolled
8 in the training course, did anyone else make any
9 statement that caused you to believe that taking the
10 training course was mandatory?

11 A. I had a conversation with Mr. Le after that
12 conference call where he was stating the importance of
13 everybody getting on the program and making sure that
14 all pharmacists were on board.

15 Q. Okay. Other than your conversations with
16 Mr. Le, nobody else made a statement to you about
17 enrolling in the training course that caused you to
18 believe it was mandatory prior to the time you
19 enrolled; is that correct?

20 A. Correct.

21 Q. At the time you enrolled in the training
22 course, what was your rate of pay?

23 A. I would have to estimate in the high 60s or
24 low 70.

25 Q. High 60s or low 70s per hour; correct?

1 A. Correct.

2 Q. From January 1, 2013, until your last date of
3 employment with Wal-Mart, did you have other
4 pharmacists that reported to you?

5 A. Other pharmacists that reported to me?

6 Q. Right.

7 A. Yes.

8 Q. Who were they?

9 A. Off the top of my head, John Carlson, Michael
10 Rick, Abbas Moghadam.

11 Q. How do you spell it?

12 A. A-b-b-a-s. Moghadam is M-o-g-h-a-d-a-m. My
13 estimate on the spelling of his name.

14 Q. Anyone else?

15 A. That I could recall right now, that's the
16 only ones that I had.

17 Q. Okay. So those were the three pharmacists
18 that you supervised from January 21, 2013, until your
19 last date of employment with Wal-Mart?

20 A. I believe so.

21 Q. Did all three of those pharmacists eventually
22 become certified to administer immunizations?

23 A. Michael Rick was already certified when he
24 came to Wal-Mart. John Carlson did go through the
25 program. And Abbas, I believe, left my area, so I'm

1 Court and is a confidential document, which is
2 attached to Exhibit 8 to Ms. Nikmanesh's deposition,
3 and it was Exhibit 3 to the second amended complaint.
4 I'm going to show it to you now.

5 Is that the PAID toolkit that you were
6 referring to?

7 A. Correct.

8 Q. Do you know who authored that document?

9 A. Who what?

10 Q. Who authored it.

11 A. No, I do not know.

12 Q. Do you know the intent of that author?

13 A. The intent's pretty clear for me is our --
14 what we're -- us, as pharmacies, are going to be doing
15 to ensure that this program is done.

16 Q. Okay. Then, do you know that the intent of
17 that author was to convey that taking the training
18 course was mandatory?

19 A. It seems to me it would be.

20 Q. Okay. What do you base that --

21 A. On the contents of this toolkit.

22 Q. Is there anything specifically in that
23 toolkit that states that taking the training course is
24 mandatory?

25 A. What you read out of it tells me that it's

1 MR. YSLAS: No. I'd like to stay on the
2 record.

3 MR. EPSTEIN: Well, it's -- we've been going,
4 like, an hour and 20 minutes.

5 MR. YSLAS: Why don't we give him a minute to
6 review it, and then I'll finish my question.

7 (Pause in proceedings.)

8 THE WITNESS: Okay.

9 BY MR. YSLAS:

10 Q. Okay. Is there anything in that document,
11 that PAID toolkit, that specifically states that
12 taking the training course is mandatory?

13 A. It implies that if you're doing the
14 immunization, you have to be trained, right.

15 Q. Okay. So my question -- I'm going to ask you
16 about what -- how -- what you think is implied by the
17 document. I want to make a distinction right now,
18 though.

19 There's nothing in that document that
20 specifically states that taking the training course is
21 mandatory; is that correct?

22 A. It does not say taking this training course
23 is mandatory on this document.

24 Q. Okay. You think it's implied by the document
25 based on your interpretation of it; correct?

1 BY MR. YSLAS:

2 Q. Mr. Othman [sic], a couple of background
3 questions I meant to cover.

4 While you were a pharmacist with Wal-Mart,
5 what were your job duties?

6 A. As a pharmacist, my duty is to take in
7 prescriptions, either physically or by phone or
8 nowadays by electronic means; enter those
9 prescriptions; put it into the systems; process the
10 prescriptions; dispense it to the patient; provide
11 counseling or not provide counseling, depending on the
12 patient and the circumstance; and oversee that
13 process.

14 Q. Do you know whether or not Mr. Othman ever
15 hired pharmacists that were not certified to conduct
16 immunizations?

17 A. I would not have any knowledge of that time.
18 He came in right when we started the program. So I'm
19 not sure.

20 Q. Okay. In the market you worked in, do you
21 know if -- in 2013 through the time that you left, do
22 you know if pharmacists were ever hired that were not
23 certified to conduct immunizations?

24 A. I don't have knowledge about the hiring
25 procedures my bosses did. So I don't have that

1 knowledge.

2 Q. So as we sit here today, you don't know one
3 way or the other if pharmacists were hired in your
4 district that weren't qualified to administer
5 immunizations; is that correct?

6 A. That's correct.

7 Q. As we sit here today, do you know if any
8 pharmacists at Wal-Mart did not take the training
9 course or is not otherwise certified to conduct
10 immunizations?

11 A. I wouldn't have that knowledge.

12 Q. So you can't think of one person, though, as
13 we sit here today that you know isn't qualified to
14 conduct immunizations that's presently employed by
15 Wal-Mart?

16 A. Off the top of my head, I do not know either
17 way.

18 Q. Looking at your declaration, which I'll --
19 pardon my reach just to get that in front of you
20 again. In Paragraph 5 -- well, why don't you read
21 Paragraph 5 to yourself, and I've got a question about
22 it, which is Page 2 of your declaration.

23 A. Okay.

24 Q. Okay. So in your declaration, you state:
25 Since approximately 2002, the pharmacists in

1 to take the training course?

2 A. Approximately.

3 Q. Okay. So if a floater worked 8 hours in a
4 week, and it took them 20 hours -- let's just say that
5 they took the course all in one week, including the
6 self-study -- that would be 28 hours; right?

7 A. Correct, if it was done in the same week.

8 Q. Okay. So it's possible that a floater would
9 have worked less than 40 hours in a week including the
10 training course; correct?

11 A. There's that possibility.

12 Q. Okay. And as you already testified, the
13 hours of floaters vary; correct?

14 A. Floaters' hours do vary. There's part-time
15 floaters, and there's full-time floaters. So that all
16 varies.

17 Q. Okay. And the part-time floaters may work a
18 day a week, two days a week, as little as one day a
19 month; right?

20 A. Possibly, yes.

21 Q. Okay. And you don't know the hourly wage of
22 these -- every single one of these floaters; right?

23 A. No.

24 Q. Now, your statement in here includes there's
25 2500 pharmacists outside of California that are

1 Q. Was there any presentation about it, like --
2 strike that.

3 Was there any written presentation about the
4 training course?

5 A. No. It was a conference call.

6 Q. That's described in page -- Paragraphs 12 and
7 13 of your declaration; correct?

8 A. Let me take a look. Correct.

9 Q. In your mind, is there a written policy that
10 taking the mandatory -- strike that.

11 In your mind, is there a written policy from
12 Wal-Mart that indicates that taking the training
13 course is mandatory?

14 A. Yes, the PAID toolkit.

15 Q. Okay. Anything else?

16 A. That sums it up.

17 Q. Okay. I know it sums it up, but I want to
18 make sure there's nothing else in your mind that
19 constitutes a written policy from Wal-Mart that taking
20 the training course is mandatory. Correct?

21 A. Correct.

22 Q. And the reason you believe that that states
23 the written policy -- strike that.

24 And the reason you believe that the PAID
25 toolkit states that taking the training course is

1 mandatory is the existence of the document which you
2 previously testified about; right?

3 A. Repeat that to me one more time.

4 Q. The reason you believe the PAID toolkit
5 states that taking the training course is mandatory is
6 the existence of that document which you previously
7 testified; right?

8 A. Which document?

9 Q. The PAID toolkit.

10 A. Yes.

11 Q. Okay. You don't know who developed the PAID
12 toolkit; correct?

13 A. Correct.

14 Q. You don't know how the PAID toolkit was
15 developed; correct?

16 A. Correct.

17 Q. Other than what you've already testified to
18 as to the markets you worked in, you don't know how
19 the training course was communicated in terms of it
20 being available; correct?

21 A. Repeat that one more time for me.

22 Q. So, in other words, other than the
23 communications you've already testified to as to the
24 communications within your market in California, the
25 availability of the PAID toolkit or taking the

1 training course, you don't know how that was
2 communicated in other regions of the country; correct?

3 A. I know it was communicated in other regions
4 from the conversations I had with other pharmacists in
5 other areas.

6 Q. Okay. Those are the conversations that
7 you're speaking about that you already testified to
8 that you can't remember the pharmacy number, you can't
9 remember the pharmacist's name, and you don't know if
10 they were exempt or nonexempt.

11 Are those the conversations you're referring
12 to?

13 A. That includes them, but there was also some
14 pharmacists in California that I had conversations
15 with that --

16 Q. Okay. Outside of California, you really have
17 no idea how the availability of the training course
18 was communicated; right?

19 A. No.

20 Q. Is that correct?

21 A. Correct.

22 Q. Okay. And inside California, your knowledge
23 is limited in terms of the conversations that you were
24 personally present about or heard from someone else;
25 right?

1 A. Correct.

2 Q. Okay. And the conversations that you heard
3 from someone else, you weren't present during those
4 conversations; right?

5 A. Correct.

6 Q. Okay. So it's clear to me, Mr. Atencio, that
7 your personal experience led you to believe, based on
8 what was told to you and the totality of your
9 circumstances, that taking the training course was
10 mandatory. Is that fair to say?

11 A. Correct.

12 Q. Okay. But you really don't know if that same
13 message was conveyed in the same way in other parts of
14 the country; right?

15 A. From my conversation, it seemed really clear
16 to me that that was the same message.

17 Q. Okay. But the conversations that you're
18 talking about with pharmacists you don't remember the
19 names of, you don't know the pharmacy number, and you
20 don't know if they were exempt or nonexempt; right?

21 A. Correct.

22 Q. Okay. Did any of those people tell you
23 that -- the specifics of how it was communicated to
24 them that the training course was mandatory?

25 A. They pretty much summed it up that it was

1 December 2013 -- I assume the period to take the 30
2 hours was from July 2013 to July 2015; right?

3 A. Correct.

4 Q. Okay. Just prior to the time you took the
5 training course, how many CE hours had you finished?

6 A. I can't recall.

7 Q. Had you finished all of them --

8 A. No.

9 Q. -- at that point?

10 Did you get CE credit for taking the training
11 course?

12 A. Yes.

13 Q. How many hours?

14 A. 20 hours, I believe.

15 Q. So you received a benefit from taking the CE
16 course in terms of 20 hours of CE credit; right?

17 A. Benefits? I'm not sure how you define
18 "benefits." You could submit this as part of your CEs
19 if you wanted to.

20 Q. Okay. Taking the training course helped you
21 complete a portion of your CE; correct?

22 A. If you wanted to.

23 Q. Did it for you?

24 A. For me, yeah, I used it.

25 Q. Okay. I just want to be clear. You don't --

1 immunization training course; right?

2 A. Correct.

3 Q. Do you know whether you could have just on
4 your own gone out and done it somewhere else other
5 than -- and not get paid for it by Wal-Mart?

6 A. There's that possibility to do it, but
7 that's -- that was never told to me.

8 Q. Mr. Atencio, other than what you've already
9 testified to in your declaration and the deposition
10 testimony this morning, is there anything else that
11 caused you to believe that taking the immunization
12 training course was mandatory?

13 A. Let me think. I think I already stated
14 everything.

15 Q. Okay. And as far as you know, it was left to
16 the discretion -- well, strike that.

17 As we sit here today, do you have any
18 knowledge that a policy was formulated by Wal-Mart
19 from the top, so to speak, from top management that
20 taking the training course was mandatory?

21 A. That's the message we got.

22 Q. Okay. It's the message you got. But do you
23 have any idea who authored the policy?

24 A. All we listened was to the message.

25 Q. Okay. Based on the communications you've

1 already talked about from your regional manager and
2 your market manager; correct?

3 A. Correct.

4 Q. Okay. But you don't know how this policy was
5 developed or who developed it; right?

6 A. Correct.

7 Q. Okay. And you don't know how it was conveyed
8 other than what you've already testified to; right?

9 A. Correct.

10 Q. Okay. And as far as you know, it was left to
11 the discretion of divisional managers how to convey to
12 regional managers who would convey it to market
13 managers; correct?

14 MR. EPSTEIN: Objection --

15 THE WITNESS: I don't know that.

16 MR. EPSTEIN: -- calls for speculation.

17 Lacks foundation.

18 BY MR. YSLAS:

19 Q. It would be speculation on your part; right?

20 A. Yeah.

21 Q. You really don't know; correct?

22 A. I don't know.

23 MR. EPSTEIN: About how the divisional
24 managers may have communicated? I'm not -- what
25 question are we answering?

1 to be reduced?

2 A. The implication was that.

3 Q. Okay. Before we get to the implication, did
4 anyone ever directly tell you that if you didn't take
5 the training course, your hours were to be reduced?

6 A. You want to know if they told me in those
7 exact words that you phrased it?

8 Q. Yes.

9 A. If they said those exact words. I don't
10 remember if they used those exact words that you just
11 used right now.

12 Q. Okay. Did anyone ever tell you in any other
13 words that if you don't take the training course --
14 did anyone ever tell you in substance if you don't
15 take the training course, your hours will be reduced?

16 A. Yes.

17 Q. Who told you that?

18 A. Khoi Le.

19 Q. Okay. And that's in the conversation that's
20 in your declaration at Paragraph 12 through 13; right?

21 A. Correct.

22 Q. Okay. Do you know personally if Mr. Le ever
23 told anyone else that? That if their hours -- strike
24 that. Do you know if Mr. Le ever -- strike that.

25 Do you personally know if Mr. Le ever told

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1 any other pharmacist that if they didn't take the
2 training course, their hours would be reduced?

3 A. From conversations I've had with other
4 people, they said they talked to Khoi Le. They asked
5 them what happens if they don't do the training. Khoi
6 Le -- they said that Khoi Le said we're doing this
7 program. In order to do this program, we got to have
8 pharmacists that are immunizing, which led them to
9 believe that their hours would be reduced or cut if
10 they didn't do it.

11 Q. Okay. And who are those people?

12 A. Teresa Corbala, Maricela Ochoa. There must
13 have been some others that slip my mind right now.

14 Q. Okay. And these are pharmacists that
15 reported to Mr. Le; right?

16 A. At that particular time, he was covering our
17 district.

18 Q. So, to your knowledge, Mr. Le never directly
19 said if you don't take the training course, your hours
20 would be reduced; correct?

21 A. I'm not sure if he used those exact words.

22 Q. Okay. And other than Mr. Le, are you aware
23 of anyone else in Wal-Mart management ever saying to
24 pharmacists that if they didn't take the training
25 course, their hours would be reduced?

1 A. I'm not sure.

2 Q. Did Mr. Le ever tell you that if you didn't
3 take the training course, you'd be transferred to
4 another pharmacy?

5 A. He did not use those words with me.

6 Q. He used the words that you've described on
7 page -- Paragraph 12 and 13 of your declaration;
8 correct?

9 A. Yeah, the words I used in -- on that
10 statement, yes.

11 Q. Okay. Are you aware of anybody in Wal-Mart
12 management ever telling a pharmacist that if they
13 didn't take the training course, they'd be transferred
14 to another pharmacy?

15 A. Transferred? The word "transfer" came into
16 conversation. I don't remember in what context it
17 was. But not that I could recall.

18 Q. All right. Did Mr. Le ever tell you directly
19 that if you didn't take the training course, your
20 employment with Wal-Mart would be terminated?

21 A. He never mentioned the word "termination."

22 Q. Are you aware of anybody in Wal-Mart
23 management ever telling a pharmacist that if they
24 didn't take the training course, their employment
25 would be terminated?

1 A. It's vaguely familiar.

2 Q. As we sit here today, can you recall if
3 you've ever seen this document before?

4 A. It looks like the -- I vaguely remember the
5 home study that we had to do.

6 Q. This document, the home study you had to do,
7 you mean it was part of the training course materials
8 that you studied at home?

9 A. Yes.

10 Q. Okay. I just want to make sure. Are you
11 sure or are you a little uncertain?

12 A. I'm a little uncertain because I don't recall
13 the exact page-by-page material -- material that we
14 covered.

15 Q. Now, this document is not authored by Wal-
16 Mart; correct?

17 A. I got no knowledge of that.

18 Q. You don't know one way or the other; right?

19 A. This particular document?

20 Q. Right.

21 A. It says American Pharmacists Association, so
22 it's not by Wal-Mart.

23 Q. Okay. Is there anything in this document
24 that ever caused you to think that taking the training
25 course was mandatory?

1 Q. I assume that applies for all the documents
2 in here. The next one is Dallas, then Philadelphia,
3 Atlanta. And then we get to California in Silicon
4 Valley at the end.

5 A. Okay.

6 Q. You don't have personal knowledge about any
7 of the circumstances that led to these job postings
8 being posted; right?

9 A. No.

10 Q. Is that correct?

11 A. Correct.

12 Q. In looking at the documents, though, these
13 appear to be for hiring somebody into Wal-Mart; in
14 other words, they don't apply to existing, currently
15 employed pharmacists; right?

16 A. Are you stating that as a fact or --

17 Q. I'm asking you.

18 A. Okay. I don't know.

19 Q. Okay. And turning to Exhibit 6, which is the
20 next document, it's a job description, as is
21 Exhibit 7. One is for the staff pharmacist; another
22 is for the pharmacy manager.

23 Do you know who authored either of these
24 documents?

25 A. No, I do not.

1 REPORTER'S CERTIFICATE

2

3 I, Jan M. Roper, a Certified Shorthand
4 Reporter No. 5705, do hereby certify:

5 That, prior to being examined, the witness
6 named in the foregoing deposition, ELVIS ATENCIO, was
7 by me duly sworn to testify the truth, the whole
8 truth, and nothing but the truth.

9 That said deposition was taken down by me in
10 shorthand at the time and place therein named and
11 thereafter transcribed under my direction, and I
12 hereby certify that the foregoing deposition is a true
13 and correct transcript of my shorthand notes so taken.

14 I certify that a request has been made by, or
15 on behalf of, the witness to review, correct and sign
16 the transcript of these proceedings.

17 I further certify that I am neither counsel
18 for nor related to any party to said action nor in
19 anywise interested in the outcome thereof.

20 IN WITNESS WHEREOF, I have hereunto
21 subscribed my name this 1st day of July, 2015.

22

23

24

JAN M. ROPER, RPR, CSR NO. 5705

25

EXHIBIT F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA — SOUTHERN DIVISION

AFROUZ NIKMANESH, ELVIS	)	CASE NO.:
ATENCIO, ANNA NGUYEN, AND	)	8:15-cv-00202-AG-JCG
EFFIE SPENTZOS, on behalf of)	
themselves, the general)	
public, and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
WAL-MART STORES, INC., a)	
Delaware corporation, and)	
WAL-MART ASSOCIATES, INC., a)	
Delaware corporation, and)	
DOES 1 through 10, inclusive,)	
)	
Defendants.)	
_____)	

VIDEO DEPOSITION OF EFFIE SPENTZOS
Thursday, July 2, 2015
Los Angeles, California

Reported By:
Jan M. Roper, RPR,
CSR No. 5705
File No.: 150702JR

1 training course with Mr. Patel; correct?

2 A. Yes.

3 Q. Have you ever -- strike that. Mr. Moore: Do
4 you know -- do you know the territory that he oversaw?

5 A. It was the western regional territory.

6 Q. And do you know what specifically the western
7 regional territories covered?

8 A. I believe it was definitely California,
9 Oregon, Washington, Alaska, Hawaii, Arizona, Colorado,
10 Utah, Montana and Idaho, if I remember correctly.

11 Q. Okay. Okay. So Mr. Moore's authority was
12 limited to the western regional states you've just
13 mentioned; correct?

14 A. Yes.

15 Q. And Mr. Patel's authority was limited to the
16 western regional states you've just mentioned; right?

17 A. Yes.

18 Q. Now, Mr. Voigt, as your regional -- as the
19 regional supervisor that covered the territory you
20 worked in when you were in Windsor, what area did he
21 supervise?

22 A. I am not 100 percent sure.

23 Q. So you don't know the territory that
24 Mr. Voigt supervised; correct?

25 A. I believe it was, besides Northern

1 California, Oregon, Washington and, I believe, Alaska.

2 Q. And so Mr. Voigt's authority was limited to
3 the territory you've just described; correct?

4 A. As I remember, yes.

5 Q. Did you ever discuss the training course with
6 Mr. Voigt?

7 A. No. I didn't see the need.

8 Q. Have you ever spoken to Mr. Voigt at all?

9 A. Yes.

10 Q. How many occasions?

11 A. He actually had come to the store -- visited
12 the store a couple times, and I have seen him at
13 conferences and talked to him, and I have talked to
14 him again over some other issues. So I would say
15 maybe half a dozen times.

16 Q. Approximately six times?

17 A. Yes.

18 Q. Now, Mr. Jeremy Smith, what -- as the market
19 manager from January 2013 to July 2014 in Windsor,
20 what stores did he oversee?

21 A. He oversaw the -- would you like numbers or
22 locations? What do you prefer? Actually, maybe
23 locations because I don't know all the numbers.

24 Q. Okay.

25 A. Okay. So Rhonert Park was one of them --

1 Q. How do you spell that?

2 A. R-h-o-n-e-r-t.

3 -- and my store, Windsor; Ukiah, U-k-i-a-h;
4 the Richmond store, the Fairfield store, Vacaville
5 store. I'm trying to recall. I can't recall all of
6 them, to be honest with you, because the districts had
7 changed at some point as well. So those are the ones
8 I remember the most.

9 Q. Approximately how many stores did Mr. Smith
10 oversee?

11 A. About 12, I would say.

12 Q. And they included the ones you've just
13 mentioned; correct?

14 A. Yes.

15 Q. Mr. Smith's authority was limited to the 12
16 stores he supervised; correct?

17 A. Whatever numbers exactly he was supervising.
18 About 12, yes.

19 Q. Okay. So the approximate number of stores
20 was 12; right?

21 A. Yes.

22 Q. So his authority was limited to the -- strike
23 that.

24 Mr. Smith's authority was limited to the
25 approximately 12 stores he supervised; correct?

1 MR. PARCELLS: Objection. Speculation.

2 To the extent you know.

3 BY MR. YSLAS:

4 Q. Go ahead.

5 A. No.

6 Q. No, that's not correct?

7 A. No.

8 Q. Why is that incorrect?

9 A. Well, the districts did change, so he was
10 overseeing other stores. I think he moved further
11 south on the East Bay. And, furthermore, whenever
12 another district manager or market manager was on
13 vacation or was not available, then the district
14 managers would oversee the other person's store. So
15 they were interchangeable.

16 Q. Okay. So other than the 12 stores that he --
17 strike that.

18 Mr. Moore -- I'm sorry. Mr. Smith oversaw
19 approximately 12 stores, and then at some point he
20 moved somewhere south in the East Bay and supervised
21 different stores, and then on occasion when a district
22 manager was on vacation, he would fill in for
23 overseeing that person's store; right?

24 A. Yes.

25 Q. So Mr. Smith's authority was limited to the

1 stores you've just mentioned; in other words, the 12
2 stores he oversaw, the stores where he moved to the
3 East Bay and the stores where he would fill in; right?

4 MR. PARCELLS: Objection. Speculation.

5 To the extent you know.

6 THE WITNESS: Yes, I do not know any other
7 stores that he might have been, so I can't speculate.

8 BY MR. YSLAS:

9 Q. Okay. And you can't give me any facts about
10 any authority Mr. Smith had beyond that what you've
11 just testified; right?

12 A. Yes.

13 Q. I know from your declaration you spoke to
14 Mr. Smith about the training course. Right?

15 A. Yes.

16 Q. Did you ever personally witness Mr. Smith
17 talk to Mr. Voigt about the training course?

18 A. No.

19 Q. At some point you formed the belief that
20 taking the training course was mandatory; right?

21 A. From the beginning, yes.

22 Q. Okay. And the reasons you formed that belief
23 are stated in your declaration; correct?

24 A. Yes, and some additional ones.

25 Q. Okay. We'll get to those soon. Now,

1 A. Yes.

2 Q. While working for Kaiser, did you administer
3 immunizations?

4 A. We were not required, no.

5 Q. While working for Rite Aid, have you
6 administered immunizations?

7 A. I have -- they did request for my
8 certificate, which I gave, and the opportunity hasn't
9 presented itself but, yes, I would be available for
10 immunizations.

11 Q. Okay. Is it a minimum qualification to
12 become a pharmacist at Rite Aid that you perform --
13 you have the ability to perform immunizations?

14 A. I believe it's a preferred, because the
15 comment on -- would be that they can -- I believe it's
16 preferred.

17 Q. Okay. So at Rite Aid it's a preferred
18 qualification, not a minimum qualification; correct?

19 A. I believe so.

20 Q. Okay. And it's not mandatory that you be
21 able to administer immunizations at Rite Aid; correct?

22 A. Maybe I should clarify that I'm working for a
23 relief agency contracting for Rite Aid.

24 Q. Okay.

25 A. So the certificate I provided was to the

1 relief agency.

2 Q. Okay. And though -- to your knowledge, you
3 testified that it's a preferred qualification for
4 Rite Aid; right?

5 A. I assume it's preferred, because when I
6 applied for the position through the relief agency,
7 they did not tell me that it's a mandatory. They
8 simply requested if I have an immunization
9 certificate.

10 Q. Okay.

11 A. So that's my implication.

12 Q. And the word "mandatory" does not mean the
13 same thing as "preferred"; right? Those are two
14 different things in your mind; right?

15 A. Yes.

16 Q. "Mandatory" means "required"; right?

17 A. But I have to rephrase it that, working for
18 Rite Aid, they do advertise for immunizations, and
19 they do expect their pharmacists to give the
20 immunizations. So the expectations are that I will
21 give it.

22 Q. Okay. But as listing it as a preferred
23 qualification, as you've already testified, that's
24 different in your mind than a minimum qualification,
25 which makes it mandatory; correct?

1 following SOPs, standard operating procedures.

2 Q. From January 2013 forward, do you know how
3 many divisional managers there were for Wal-Mart in
4 Health & Wellness?

5 A. Possibly three or four.

6 Q. When you say "possibly three or four," do you
7 know?

8 A. I don't know. I'm assuming there's something
9 like 5,000 Wal-Marts across the US and maybe 7-, 800
10 stores per region. So it was just an estimate.

11 Q. Was it an estimate or a guess?

12 A. It was a guess. It was a guess.

13 Q. Okay. So just to be clear, you really don't
14 know how many regional managers there have been for
15 Wal-Mart --

16 A. No.

17 Q. -- at any given time since January 2013;
18 correct?

19 A. Yes, I don't know for a fact.

20 Q. To your understanding, did each of those
21 divisional managers then have authority over certain
22 territories?

23 A. I don't know the details. I'm assuming -- I
24 don't know what their arrangements are and where
25 their -- their direction is coming from. So I can't

1 say. It would all be speculation on my part to say
2 what the intricacies are of that. I don't know.

3 Q. Okay. You really have no idea what the
4 divisional managers' scope of authority is; is that
5 correct?

6 A. I'm not privy to that information.

7 Q. Okay. So is it a fair statement to say that
8 you don't have any idea what the divisional managers'
9 scope of authority is?

10 A. I can guess that it's over their regions, but
11 that's all I can say.

12 Q. Okay. Beyond that, you really don't know?

13 A. I don't know the intricacies of the
14 hierarchy.

15 Q. Okay. Since January 2013, at any given time
16 do you know how many regional managers there have
17 been?

18 A. No.

19 Q. To your understanding, is the regional
20 manager's authority limited, though, to the
21 territories that they supervise?

22 A. I can't say for a fact.

23 Q. Okay. You really don't know; right?

24 A. I don't know.

25 Q. So is it a fair statement to say that you

1 don't know the regional managers' scope of authority?

2 A. I know they're up in the hierarchy of Wal-
3 Mart, and you have regionals reporting to them. So
4 they disseminate information from that point down.

5 Q. You mean market managers reporting to them?

6 A. Market -- well, regionals -- you're talking
7 about divisionals; right?

8 Q. Let's back up for a second because I think
9 we're getting a little confused now. We already
10 talked about the divisionals.

11 A. Oh, okay.

12 Q. Now I'm moving on to the regional managers.
13 And regional managers report to divisional managers;
14 right?

15 A. Right.

16 Q. Okay. So just focusing on regional managers,
17 you already testified you don't know how many there
18 were. Do you know anything about the level of their
19 authority -- well, strike that.

20 To your understanding, was the regional
21 managers' authority limited to the territories they
22 covered -- they supervised?

23 A. I don't understand the intricacies of the
24 Wal-Mart, you know, hierarchy. All -- so I'm assuming
25 that -- I don't know. I don't really know the details

1 of their duties.

2 Q. Okay. So you don't know the details of
3 regional managers' duties; right?

4 A. No, I don't. All I know is that direction
5 comes from the top, and it's passed on to different
6 levels. How it's disseminated, I'm not quite sure. I
7 just know what came down to me was coming from higher
8 authority passed on down.

9 Q. Okay. And you don't know how the
10 communications come from -- from divisionals to
11 regionals to market managers; right?

12 A. They would have meetings, corporate meetings,
13 where my market manager would be called back to
14 Arkansas, and they would be given direction to come
15 back and report to us as to different -- different
16 organizational changes or programs or whatever. So
17 I'm assuming that's how the communication was
18 happening, but I don't really know in detail.

19 Q. Right. And you were never present during any
20 of those communications --

21 A. No.

22 Q. -- correct?

23 A. Correct.

24 Q. Okay. And you don't really know how those
25 communications took place; correct?

1 A. I'm assuming the usual way of meetings and
2 e-mails and phone calls and conferences.

3 Q. But specifically you don't know the content
4 of those communications; correct?

5 A. I know there were a lot of conference calls
6 where our market managers would be conferencing with
7 the regionals, and they were telling us that they're
8 in conference calls. So my estimate -- or my
9 conclusion would be that they were communicating
10 through conference calls with their superiors.

11 Q. And -- but you didn't personally witness
12 those communications; correct?

13 A. No, I did not.

14 Q. Okay. Now, I'm not sure you answered the
15 specific question I asked. I'll read some testimony
16 which was relevant and I wanted to follow up on, but I
17 want to go back to my original question, which is that
18 you don't know the scope of regional managers'
19 authority; is that correct?

20 A. I can't say for a fact.

21 Q. Okay. All you know is that they oversee
22 certain territories; right?

23 A. That they have authority over market
24 managers.

25 Q. Okay. And those market managers within the

1 territories that they supervise; correct?

2 A. I guess, yes.

3 Q. Since January of 2013, do you know how many
4 market managers there have been in the United States
5 for Wal-Mart?

6 A. No. It would be an estimate of, say, 15
7 stores per district -- per market manager divided by
8 5,000. This is the only way I would figure it out.
9 So I don't know for a fact.

10 Q. Okay. So your estimate is for Wal-Mart
11 there's about 5,000 pharmacies; is that right?

12 A. I believe more than that.

13 Q. Okay. Well, you used the figure 5,000. What
14 did you mean?

15 A. Pharmacies. Did you say pharmacists or
16 pharmacies? I didn't hear.

17 Q. Pharmacies -- well, I said stores, but let's
18 get back on the same page.

19 Is it your approximated -- is it your best
20 estimate that there's approximately 5,000 pharmacies
21 for Wal-Mart in the United States?

22 A. Yes.

23 Q. Okay. And your estimate is that they're
24 divided into markets that consist of approximately 15
25 pharmacies per market; right?

1 A. As an estimate, yes.

2 Q. Okay. So I just -- so you know, I was just
3 on my phone on my calculator dividing 5,000 divided by
4 15, and the figure I came up with was 333.

5 So my question is -- to you is: Is it your
6 best estimate that -- based on your knowledge, that
7 there were about 333, or somewhere around there,
8 markets?

9 A. Somewhere in the 300 probably, something like
10 that.

11 Q. Okay. So your best estimate is somewhere in
12 the 300s is how many markets there have been in
13 Health & Wellness for Wal-Mart since January of 2013;
14 is that fair to say?

15 A. Based on that estimation.

16 Q. Yeah. Okay. Do you know how many markets
17 there have been at any given time in California since
18 2013?

19 A. No, I don't.

20 Q. Do you know how many pharmacies there have
21 been in California with Wal-Mart since January 2013?

22 A. I believe there might be close to 200.

23 Q. I just did the same thing. 200 divided by 15
24 is 13.33. But I don't want you to guess. What I'm
25 asking -- going to ask you is -- I think I just -- you

1 just answered it. I want to make sure.

2 You don't know how many markets there have
3 been in California since January 2013; right?

4 A. No, I don't.

5 Q. Okay. As we sit here today, do you know the
6 names of any of the divisional managers since
7 January 2013 other than Mr. Patel and Mr. Moore?

8 A. No.

9 Q. And other than the limited conversation you
10 had with Mr. Moore, you've never spoken to any other
11 divisional manager; correct?

12 A. I did not have a conversation with Mr. Moore.
13 It was an e-mail.

14 Q. I'm sorry. E-mail.

15 A. And the other part is I did not speak to
16 anybody else.

17 Q. Okay. So other than that e-mail
18 communication you had with Mr. Moore, you've never had
19 any communications with any other divisional managers;
20 correct?

21 A. Yes.

22 Q. Other than Mr. Voigt, have you ever spoken to
23 any regional managers?

24 A. I can't recall because I've been with this
25 company for so -- oh, you're talking about the

1 specific period --

2 Q. January --

3 A. January --

4 Q. I'm sorry. Let me start it over again.

5 A. Oh.

6 Q. Since January 2013, other than Mr. Voigt,
7 have you spoken to any regional managers?

8 A. No.

9 Q. Since January 2013, other than Mr. Smith,
10 have you spoken to any market managers?

11 A. I'm trying to think on that. I possibly have
12 based on the fact that when Jeremy was not available,
13 I would contact whoever was on call with questions
14 that we might have.

15 Q. Okay. You never discussed the training
16 course with any market manager other than Mr. Smith
17 since January 2013; correct?

18 A. Yes.

19 Q. I know I just said it, but that's a correct
20 statement; right?

21 A. Yes.

22 Q. Okay. Have you ever spoken to anybody as
23 part of Wal-Mart's Health & Wellness quality team?

24 A. No.

25 Q. Have you ever spoken to Susanne Hiland,

1 H-i-l-a-n-d?

2 A. No.

3 Q. Have you ever spoken to Deanna Seiler,
4 S-e-i-l-e-r?

5 A. No.

6 Q. Have you ever spoken to JoLynn Coleman?

7 A. No.

8 Q. Have you ever spoken to Pam Piotrowski,
9 P-i-o-t-r-o-w-s-k-i?

10 A. No.

11 Q. Have you ever spoken to Alfred Rodriguez in
12 HR?

13 A. No.

14 Q. Now, the divisional managers, do you know who
15 they report to?

16 A. I'm assuming the head of the -- of Wal-Mart.
17 I'm not sure. I don't know.

18 Q. Okay. Have you ever spoken to a person -- to
19 any president or vice president of Health & Wellness
20 at Wal-Mart?

21 A. No. And I guess that's who those divisionals
22 would be reporting to.

23 Q. And you've never spoken to those persons;
24 right?

25 A. No.

1 Q. Is that correct?

2 A. Yes.

3 Q. Do you know any pharmacist at Wal-Mart that
4 has not taken the training course?

5 A. No.

6 Q. Do you know any pharmacist at Wal-Mart that
7 is not immunization-certified?

8 A. No.

9 Q. Do you know what percentage of Wal-Mart
10 pharmacists are not immunization-certified?

11 A. Based on my knowledge of this company and the
12 experiences that we've had, I would be safe to guess
13 that just about everybody is immunization-trained.

14 Q. You said "safe to guess." Do you know?

15 A. I would, again, draw the conclusion based on
16 my experience and the way the presentation was made on
17 the implementation of the immunization program and the
18 preparations and the pressure that was placed on us,
19 that I would -- it would be safe for me to draw the
20 conclusion that's just about everybody is immunized --
21 is certified. Excuse me.

22 Q. So based on that experience that you had, in
23 your mind, your conclusion is, let's say, 99 percent
24 or more of the pharmacists at Wal-Mart are certified?

25 A. I would say close to that.

1 Q. Okay. Other than the experience you're
2 talking about, though, you haven't reviewed any data;
3 you've just -- you're reaching that conclusion based
4 on your experience with Wal-Mart; right?

5 A. I've been a pharmacist with them for a long
6 time, and I understand the company and its procedures
7 and how they operate, and the way the immunization
8 program was rolled out was no exception to any other
9 program that they had chosen to pursue for their
10 stores.

11 Q. And based on that, it's your personal belief
12 that 99 percent or more of the pharmacists in Wal-Mart
13 are immunization-certified; right?

14 A. I would say yes. Based on the promotions
15 that they have with the greetings on their stores
16 selling immunization to patients, I would say yes.

17 Q. Okay. Now, that estimate you've given me of
18 more than 99 percent, would you say that's an estimate
19 or a guess?

20 A. I would say it's an estimate.

21 Q. At some point you learned about the
22 availability of taking the training course through
23 Wal-Mart; correct?

24 A. Yes.

25 Q. When did you first learn of it?

1 the Wal-Mart structure, I was not privy to that
2 information.

3 Q. Okay. So the answer to my question is no,
4 you don't know who authored the PAID toolkit or the
5 training course; correct?

6 A. Correct, because nobody was obligated to give
7 us that information. So we do not know at that level.

8 Q. Okay. I mean that's fine. I just want to
9 make sure I understand what you know and what you
10 don't know. Okay? And right now I'm giving you the
11 opportunity to tell me exactly what you know about the
12 development of the PAID toolkit or the training
13 course.

14 Do you understand?

15 A. Yes.

16 Q. Okay. So you don't know who developed the
17 training course; right?

18 A. No.

19 Q. Correct?

20 A. Yes.

21 Q. You don't know how it was developed or the
22 process that went through developing it; correct?

23 A. Correct.

24 Q. Okay. What you do know is that it became
25 available, and Mr. Smith made statements to you

1 Q. Okay. And that's -- those are the
2 assumptions you're making based on your experience of
3 working for Wal-Mart; right?

4 A. Yeah. It's a logical train of thought that
5 you can expand on.

6 Q. Okay. So right now I'm trying to give you
7 the opportunity to give me all of the specific
8 knowledge you have regarding the communications that
9 went out in other regions, and you've given me an
10 answer.

11 Is there anything else that you base that
12 knowledge on?

13 A. 20 years of experience with Wal-Mart and
14 their methods -- understanding their methods and their
15 philosophy as a company is what makes me draw those
16 conclusions.

17 Q. Okay. Anything else?

18 A. No.

19 Q. Okay. In your mind, is there a -- was there
20 a written policy that stated that taking the training
21 course was mandatory?

22 A. Not specifically the word "mandatory" in
23 there.

24 Q. Is there any other document -- is there any
25 document, in your mind, that constitutes a written

1 another training session.

2 He told me it was the last one in the
3 district, I would have to go another one in Sacramento
4 if I chose to wait, and that he's under a timeline
5 that he has to have all his stores certified by July.

6 Q. Okay. With that amendment, you know, to your
7 statement in the declaration, there's no other
8 statements that Mr. Smith made to you that caused you
9 to believe that taking the training course was
10 mandatory; correct?

11 A. Correct.

12 Q. Mr. Smith never told you that if you didn't
13 take the training course, your hours would be reduced;
14 correct?

15 A. That is correct. But he did say that from
16 this point on, he will only be hiring -- he made a
17 point to say it during the phone call that from this
18 point on, he will make a point in hiring immunization-
19 trained pharmacists only.

20 Q. Okay. For new hires; right?

21 A. For new hires.

22 Q. Mr. Smith never told you that if you didn't
23 take the immunization training course, you would be
24 transferred to another pharmacy; correct?

25 A. No, but I could assume.

1 Q. And you've never heard any market manager or
2 anyone in management ever say that if a pharmacist
3 didn't take the training course or become
4 immunization-certified, their hours would be reduced;
5 correct?

6 A. Correct.

7 Q. You've never heard anyone in Wal-Mart
8 management ever say that if a pharmacist didn't take
9 the training course, they would be transferred to
10 another pharmacy; correct?

11 A. Not in those words, yes, correct.

12 Q. You've never heard anyone in Wal-Mart
13 management say if a pharmacist didn't take the
14 immunization training course or become immunization-
15 certified, their employment would be terminated;
16 correct?

17 A. No, but there were indirect threats.

18 Q. What were those indirect threats?

19 A. Again, like I mentioned, they were -- he made
20 a point to tell me that he is happy that I signed up
21 to take the course because from this point on, he
22 would be only hiring pharmacists that are
23 immunization-trained.

24 I had also heard -- and I can't quite recall
25 the source -- that there would need to be two

1 pharmacists per pharmacy in order for the program to
2 be implemented.

3 So by putting all those facts together, being
4 an at-will employee, and I was afraid that I could
5 easily be replaced or transferred to accommodate for
6 whatever the needs of Wal-Mart would be to bring in
7 the financial gains to the pharmacy.

8 Q. Okay. And the people that -- the person that
9 caused you to form the belief that taking the training
10 course was mandatory was Jeremy Smith; right?

11 A. He was the person, along with the other
12 comments put together in the documents.

13 Q. What other comments?

14 A. The comments that I mentioned about the fact
15 that they would want two pharmacists per store.

16 Q. Who made that statement?

17 A. That's what I said. I can't recall. It
18 was -- I was discussing these issues with a number of
19 pharmacists, and somebody told me that that comment
20 was made by somebody in management.

21 Q. The only person in management that ever made
22 a statement to you directly that caused you to believe
23 that taking the training course was mandatory was
24 Jeremy Smith; right?

25 A. Yes.

1 March 2014; right?

2 A. Correct.

3 Q. And, by the way, eventually at the end of
4 your employment you were a part-time employee; right?

5 A. Correct.

6 Q. And you worked one to two days a week?

7 A. Yes.

8 Q. So anywhere from, approximately, 8 to 16
9 hours a week?

10 A. Mostly 8 but, yes, there were times I would
11 do 16.

12 Q. And you worked 8 hours a week on occasion for
13 Wal-Mart as a part-time pharmacist; right?

14 MR. PARCELLS: 8 hours a week?

15 MR. YSLAS: Right.

16 THE WITNESS: For Ukiah? Wal-Mart or Kaiser
17 did you mean?

18 BY MR. YSLAS:

19 Q. I'd said Wal-Mart, actually. So at the end
20 of your employment there were occasions where you
21 worked just one day a week, which is 8 hours; right?

22 A. Yes.

23 Q. And are you aware of other part-time
24 employees working once a week?

25 A. Betty Christensen would have been also a

1 part-timer.

2 Q. And Ms. Christensen, were there occasions
3 when she, like other part-time employees, just worked
4 8 hours a week?

5 A. I don't know her schedule. I know she was
6 part time.

7 Q. Okay. Were there other part-time employees
8 working for Wal-Mart during your employment at any
9 time that worked one day a week, 8 hours a week?

10 A. Michael Schumacher was semi-retired, and he
11 had a haphazard schedule and --

12 Q. Okay. And without -- I'm not asking you for
13 a memory contest on names on this one. I'm just
14 asking you generally.

15 Was it your general knowledge that there
16 would be part-time employees, and sometimes they would
17 work as little as one day a week?

18 A. I can't say. I don't know what the part
19 time -- other part-time employees were doing.

20 Q. Okay. So you don't know the schedules of all
21 pharmacists around the country, of course; right?

22 A. Of course not.

23 Q. Okay. Based on your experience -- you've
24 testified a lot about your experience with Wal-Mart,
25 so let me ask you about that.

1 Do you believe on occasion there were
2 pharmacists that worked one day a week, 8 hours a
3 day -- 8 hours for the week total?

4 A. I don't know of anybody, per se. I know as a
5 district we try to have pharmacists more than one day
6 a week. The -- I don't know if it was a preference or
7 what, but I don't know if there are.

8 Q. Are you aware of part-time employees working
9 as little as two days a week?

10 A. There were not that many part-timers in my
11 district. I don't know -- I'm assuming that part-time
12 work is anything less than -- whatever it was --
13 24 hours, but I can't attest to what shifts exist out
14 there. I don't really know.

15 Q. Okay. Because you don't know the practices
16 happening in places other than where you worked;
17 right?

18 A. I'm assuming that there would be similar
19 pharmacists to myself somewhere working 8 hours. It
20 was still the same company. I can't say for a fact.
21 I don't know what is out there.

22 Q. Okay. And when you took the training course,
23 it was 8 hours for the live portion; right?

24 A. Correct.

25 Q. Okay. And then you did self-study, also;

1 right?

2 A. Yes.

3 Q. And approximately how many hours of self-
4 study?

5 A. I estimated 20, but it was probably more than
6 that. So I estimated 20.

7 Q. Okay. And is it possible, in your mind, that
8 a part-time employee, let's say, who worked 8 hours in
9 a week took the self-study and like you -- took the
10 self-study, let's say, on an 8-hour day. Between the
11 8-hour day that they worked -- strike that.

12 Between the 8-hour day that they went to the
13 live portion and the 20 hours, that would be -- the 20
14 hours of self-study, that would be 28 hours; right?

15 A. Yes.

16 Q. Okay. I mean, I'll ask you. You know, is it
17 possible to you, then, that there would be a part-time
18 employee out there that may have worked 28 hours in a
19 week, you know, 8 hours for the live portion and 20
20 hours for the self-study?

21 A. It's possible, yes.

22 Q. Okay. But you really don't know, because
23 we'd have to go look at their schedule and see what
24 they did in a given week; right?

25 A. Yes.

1 Q. Okay. One by one we'd need to sit there and
2 look at the individual's schedule and then figure out
3 if they worked -- you know, how much they worked in
4 that given workweek and how much they did for self-
5 study to figure out how many hours they worked that
6 week; right?

7 A. I guess.

8 Q. Did you -- did you -- to maintain your
9 license as a pharmacist, do you have to take
10 continuing education?

11 A. We did. And Wal-Mart provided the pharmacist
12 letter for us to take for free as one of the choices.

13 Q. Okay. So sort a predicate question to that,
14 though, is: You have continuing education
15 requirements to maintain your license as a pharmacist;
16 right?

17 A. Yes.

18 Q. And you have to complete 30 hours of CE,
19 continuing education, every 2 years; right?

20 A. Yes.

21 Q. Okay. When was your two-year period?

22 A. It's two thousand -- it goes -- my current
23 license expires two thousand -- March 2017. So the
24 previous period to that was 2015.

25 Q. Okay. And so between March 2013 and

1 March 2015, you needed to complete 30 hours of CE;
2 right?

3 A. Correct.

4 Q. Now, the training course that you took
5 through Wal-Mart, did you get credit for any CE as a
6 result of taking the training course?

7 A. It was considered 20 -- 8 for the practical
8 portion and 12 for the home portion, so 20 hours.

9 Q. So the answer to my question is yes, then?

10 You received 20 hours of CE credit; correct?

11 A. Yes.

12 Q. And that was a result of taking the training
13 course; right?

14 A. That was the option given to us, yes. That
15 was a CE course, correct.

16 Q. As of, you know, just prior to the time that
17 you took the training course with Wal-Mart in March of
18 2014, had you completed any of your CE at that time?

19 A. I'm assuming I had because I don't wait until
20 the last minute. I usually take subjects online, free
21 for the most part, of the Wal-Mart pharmacist letter
22 while I'm working.

23 Q. Okay.

24 A. So I can't recall in detail, but I probably
25 had some. I don't know how many.

1 the idea of either Washington or Oregon. So I would
2 get on the computer at home and just check out what
3 opportunities are there.

4 Q. Okay. I'm going to show you -- this is
5 Exhibit 7 to Ms. Nikmanesh's deposition, and
6 specifically, it's some of the exhibits to the second
7 amended complaint. Turn to Exhibit 4, which is a
8 National Certificate Program for Pharmacists. Let me
9 show you that.

10 Have you ever seen that document before?

11 A. Yes.

12 Q. Is there anything about that document that --
13 well, strike that.

14 Do you know who authored that document?

15 A. It's the American Pharmaceutical Association
16 that puts this out.

17 Q. So that document is not authored by anyone
18 from Wal-Mart; right?

19 A. This one? No.

20 Q. Okay. When did you see that document?

21 A. Excuse me?

22 Q. When did you see that document?

23 A. When I logged into the computer to take the
24 training course.

25 Q. Okay. Is there anything about that document

1 Q. -- documents before?

2 So, you know, just by way of example, the top
3 of this first page, which is 7-21, says Staff
4 Pharmacist Part-Time Jobs in Massachusetts at Wal-
5 Mart.

6 So my question is: You don't know who
7 authored that document; correct?

8 A. It comes from the Wal-Mart Pharmacy Human
9 Resources posting for a job.

10 Q. Okay. But you don't know specifically the
11 name of the person who authored it; right?

12 A. Obviously not, no.

13 Q. Okay. And you don't know anything about the
14 circumstances that caused somebody to post that job
15 posting in Massachusetts; right?

16 A. No. There's an opening there --

17 Q. Right.

18 A. -- part time.

19 Q. Okay. You don't have any idea what the
20 intent was in terms of posting that job; posting what
21 the needs of that store were or anything like that;
22 right?

23 A. They were short-staffed, and they needed a
24 pharmacist. It could have been a number of situations
25 to explain it, such as pharmacists quit or their

1 So I see that as also being the immunization program.

2 Q. Okay. Can I see it?

3 A. Yeah.

4 Q. Do you know who authored either of these job
5 descriptions?

6 A. Somebody at the upper echelons of Human
7 Resources that describes the attributes that they want
8 a staff pharmacist or a pharmacy manager to have for
9 their company.

10 Q. You don't know the person, though?

11 A. Of course not.

12 Q. And you couldn't possibly speak to that
13 person's intent other than to read the words in
14 these --

15 A. Well, anybody --

16 (Reporter interruption in proceedings.)

17 MR. YSLAS: Sure.

18 Q. Let's -- you couldn't possibly speak to the
19 person's intent other than to read the words in the
20 job description; right?

21 A. The intent to me is obvious that they want
22 people that are adaptable and, also, that are able to
23 go along with programs that the pharmacy is putting
24 out to guide and give direction. Whoever wrote that
25 document did it under the direction of Wal-Mart

1 A. I'm not aware of any policy, per se. But,
2 again, anybody at the level of Jeremy Smith would not
3 individually speak out because he would endanger
4 himself against the company.

5 Q. Okay.

6 A. So my conclusion to that is that this is a
7 company mandate that -- the way that it just filters
8 down to the lower levels, and he was speaking of the
9 company wishes.

10 Q. As we sit here today, since the time you
11 left, you know, Wal-Mart, are you aware of Wal-Mart
12 ever listing the immunization -- being immunization-
13 certified as a minimum -- openly as a minimum
14 qualification to being a pharmacist; in other words,
15 openly stating it must be taken?

16 A. No, I'm not aware of that.

17 Q. Okay. Ms. Spentzos, since November of 2010
18 until your last day of employment in October of 2014,
19 did you ever take a rest break?

20 A. No.

21 Q. Okay. So it's your testimony during that
22 entire period of time you never took a single rest
23 break; right?

24 A. Not the way the company policy describes the
25 rest break.

REPORTER'S CERTIFICATE

I, Jan M. Roper, a Certified Shorthand Reporter No. 5705, do hereby certify:

That, prior to being examined, the witness named in the foregoing deposition, EFFIE SPENTZOS, was by me duly sworn to testify the truth, the whole truth, and nothing but the truth.

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter transcribed under my direction, and I hereby certify that the foregoing deposition is a true and correct transcript of my shorthand notes so taken.

I certify that a request has been made by, or on behalf of, the witness to review, correct and sign the transcript of these proceedings.

I further certify that I am neither counsel for nor related to any party to said action nor in anywise interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 3rd day of July, 2015.

JAN M. ROPER, RPR, CSR NO. 5705

EXHIBIT G

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

AFROUZ NIKMANESH, ELVIS
ATENCIO, ANNA NGUYEN, AND
EFFIE SPENTZOS, on behalf of
themselves, the general
public, and all others
similarly situated,

Plaintiffs,

vs.

Case No. 8:15-cv-00202-AG-JCG

WAL-MART STORES, INC., a
Delaware corporation, and
WAL-MART ASSOCIATES, INC., a
Delaware corporation, and
DOES 1 through 10, inclusive,

Defendants.

-----/

DEPOSITION OF MICHAEL DENHAM
Tuesday, July 7, 2015
Sacramento, California

Reported by:

LORRIE L. MARCHANT, CSR No. 10523

RMR, CRR, CCRR, CLR

File No.: 150707LM

1 Q. And Mr. Smith, the Market 154 that he
2 supervised, what areas did that cover?

3 A. What areas? Okay. Ukiah, Rohnert Park,
4 Windsor, Lake County, Napa, American Canyon,
5 Vacaville, Fairfield, Martinez, originally
6 Richmond, Antioch, Pittsburg, Oakland.

7 Q. And these are all in Northern California;
8 correct?

9 A. Correct.

10 Q. So Mr. Smith has supervised approximately
11 13 pharmacies in Northern California; correct?

12 A. Yes. At a later time, if you want to be
13 accurate -- let's see. One, two, three -- at a
14 later time, three, maybe four, I don't know,
15 small-format stores called Neighborhood Markets
16 were added in. They have since been split off the
17 district and moved to their own.

18 Q. Okay. Also in Northern California?

19 A. Also in Northern California. Two in
20 Vacaville, one in Rohnert Park, one in Vallejo, and
21 I don't know exactly where -- when Pleasanton
22 opened up. I'm sorry.

23 Q. And so Mr. Smith's authority has been
24 limited to the market that he supervised under the
25 pharmacies you've just described; correct?

1 A. Correct.

2 Q. And Mr. Booker's authority has also been
3 limited to the pharmacies that you've described in
4 Market 116; correct?

5 A. Once he split off from 116, I sort of lost
6 track of him. I know that at some point they also
7 had some Neighborhood Markets added into their
8 district. Okay.

9 I also know that -- I think there was
10 another store opened. Mr. Booker has since left
11 Wal-Mart, so I don't ...

12 Q. During the time that Mr. Booker was your
13 market manager, his authority was limited to the
14 stores in Market 116; correct?

15 A. Correct. Or 119, whatever the number is.

16 Q. And those are the pharmacies that you've
17 already described; right?

18 A. Yes. To the best of my memory. I can't
19 remember all the ones down in the Valley or down
20 farther south. I'm sorry.

21 Q. Is Mr. Smith still your market manager?

22 A. No.

23 Q. And who took over for Mr. Smith?

24 A. A young lady by the name of Rachel Lozano.

25 Q. When did that happen?

1 A. Officially January 1st of this year.

2 Previous to that, she was in training that I
3 described earlier.

4 Q. And what market does Ms. Lozano supervise?

5 A. The 154 one.

6 Q. Same stores that you've already described
7 as --

8 A. Yes.

9 Q. Sorry. Let me --

10 A. Sorry.

11 Q. I promised it was going to happen. And
12 let's just try to let me finish the question.

13 A. Okay.

14 Q. So Ms. Lozano supervises the same
15 pharmacies that you've already described as to
16 Market 154; correct?

17 A. Correct.

18 Q. And her authority, then, is limited to her
19 supervision of the stores in Market 154; correct?

20 MR. BUCK: Objection. Lack of personal
21 knowledge.

22 If I object, you can still respond to the
23 question to the best of your ability.

24 THE WITNESS: Okay. To the best of my
25 ability is really I -- yes. But I don't know

1 A. Officially January 1st of this year.

2 Previous to that, she was in training that I
3 described earlier.

4 Q. And what market does Ms. Lozano supervise?

5 A. The 154 one.

6 Q. Same stores that you've already described
7 as --

8 A. Yes.

9 Q. Sorry. Let me --

10 A. Sorry.

11 Q. I promised it was going to happen. And
12 let's just try to let me finish the question.

13 A. Okay.

14 Q. So Ms. Lozano supervises the same
15 pharmacies that you've already described as to
16 Market 154; correct?

17 A. Correct.

18 Q. And her authority, then, is limited to her
19 supervision of the stores in Market 154; correct?

20 MR. BUCK: Objection. Lack of personal
21 knowledge.

22 If I object, you can still respond to the
23 question to the best of your ability.

24 THE WITNESS: Okay. To the best of my
25 ability is really I -- yes. But I don't know

1 Have you ever spoken to Mr. Patel about
2 the training course?

3 A. No.

4 Q. Okay. Have you ever spoken to any
5 divisional manager about the training course?

6 A. No.

7 Q. So you've never spoken to any divisional
8 manager about whether taking the training course is
9 mandatory; correct?

10 A. Correct.

11 Q. Other than Mr. Voigt and Ms. Schmidt, have
12 you spoken to any other regional managers since
13 January 2013?

14 A. No.

15 Q. So you haven't spoken to any regional
16 managers about whether taking the training course
17 is mandatory; correct?

18 A. Correct.

19 Q. Other than Mr. Booker, Ms. Smith and
20 Ms. Lozano, do you know the names of any other
21 market managers since January 2013?

22 A. For Wal-Mart, in general?

23 Q. I'm focusing all my questions on Wal-Mart
24 Health and Wellness.

25 A. That's what I meant. I'm sorry. When I

1 say Wal-Mart in general, I meant the Health and
2 Wellness, because I really don't know anything else
3 about anybody else. It's my little -- my little
4 tunnel vision. It's my tunnel. It's what I'm in.

5 Q. Okay. So just to make sure I understand
6 what you just said, the total of your knowledge is
7 limited to the tunnel vision of the workspace that
8 you work in; correct?

9 A. Correct.

10 Q. And that's in Napa, California; correct?

11 A. Correct.

12 Q. You really don't know the practices of
13 Wal-Mart beyond the Napa region that you work in;
14 correct?

15 A. Correct.

16 Q. So you really don't know the
17 communications made regarding the training course
18 outside of your Napa region; correct?

19 A. Correct.

20 Q. So whether or not a market manager said to
21 a pharmacist that -- or did anything to cause the
22 pharmacist to believe that taking the training
23 course was mandatory, you really have no
24 information beyond your own personal knowledge,
25 which is limited to Napa; right?

1 A. Correct.

2 Q. And you really have no idea, then, if
3 there's been any uniform practice throughout the
4 United States requiring pharmacists to take the
5 training course; correct?

6 A. Correct.

7 Q. It would be complete speculation on your
8 part; right?

9 A. That's correct.

10 Q. What you do know is what Mr. Smith told
11 you; right?

12 A. That's correct.

13 Q. And I can see from your declaration --
14 well, let's just make this an exhibit.

15 MR. YSLAS: I'm going to mark --

16 MR. BUCK: Before you do that, can we take
17 a break?

18 MR. YSLAS: Let me finish a couple of
19 questions -- well, okay. Let's go off the record.

20 (Recess taken, from 1:42 to 1:46.)

21 MR. YSLAS: Back on the record.

22 BY MR. YSLAS:

23 Q. Mr. Denham, without revealing the content
24 of your discussion, did you speak to your attorney
25 at the break?

1 conversation with Jeremy. That conversation with
2 Jeremy.

3 Q. And by "Jeremy," you're referring --

4 A. Mr. Smith.

5 Q. Sorry.

6 A. Sorry.

7 Q. By "Jeremy," your referring to Mr. Smith?

8 A. Correct.

9 Q. And six to eight months prior to March of
10 2014 would be approximately July to September of
11 2013; correct?

12 A. Correct. That's my thinking out loud,
13 trying to figure out the months and then the year.

14 Q. So sometime around July through September
15 of 2013, you received an e-mail that made you aware
16 of the training course and made you aware that it
17 was voluntary; correct?

18 A. Correct.

19 Q. And do you remember specifically who it
20 came from?

21 A. I do not.

22 Q. Do you remember who it was addressed to?

23 A. All the pharmacists in the chain.

24 Q. When you say "in the chain," do you mean
25 in the market you were working at?

1 A. My understanding is it was sent out to
2 everybody.

3 Q. So when Mr. Smith told you that you should
4 take the training course and said it in a way that
5 made you feel that you had to take it, it was
6 contrary to the e-mail that you previously
7 received; correct?

8 A. Correct.

9 Q. And, therefore, it was contrary to the
10 policy that you understood from Wal-Mart, that
11 taking the training course was voluntary; correct?

12 A. Correct.

13 Q. Did Mr. Smith tell you if he had received
14 any communications from anyone telling you that --
15 well, Mr. Smith was telling you words that led you
16 to believe that taking the training course was
17 mandatory.

18 Did he give you any idea of where he had
19 gotten that idea from; in other words, someone told
20 him that, or did he come up with it on his own, or
21 did you have any sense of it?

22 A. No sense at all.

23 Q. Okay. You just know what Mr. Smith told
24 you?

25 A. That's correct.

1 you would be terminated if you didn't take the
2 training course; correct?

3 A. Sounded pretty specific to me.

4 Q. Mr. Smith never used the words
5 specifically, that you would be terminated if you
6 didn't take the training course; correct?

7 A. Correct.

8 Q. Mr. Smith never specifically used the
9 words that your hours would be reduced if you
10 didn't take the training course; correct?

11 A. Correct.

12 Q. Mr. Smith never specifically told you you
13 would be transferred if you didn't take the
14 training course; correct?

15 A. Correct.

16 Q. Okay. He used the words that you've
17 described in your declaration and in your
18 deposition testimony here?

19 A. Correct.

20 Q. Outside of Mr. Smith, you have no idea if
21 others were told or even it was implied to others
22 that they would be terminated, their hours reduced
23 or transferred in other markets; right?

24 A. I do not know. I've had no conversation
25 with others on that specifically.

1 manager, the Health and Wellness manager.

2 Q. Okay. And that hiring is on an
3 individual, unique basis based on the needs of that
4 particular pharmacy; right?

5 A. I would hope so.

6 Q. Do you think so?

7 A. You want my honest answer? No. I think
8 it's just a warm body.

9 Q. Okay. But whether or not the person is
10 immunization certified really is an individual --
11 individualized decision made at the store level;
12 right?

13 A. No. Made at the district manager level.

14 Q. Okay. Right. The market manager?

15 A. Market manager, yes. Sorry. Using the
16 old terms.

17 Q. So I'd need to go to every single market
18 manager, let's just say 400, throughout the nation,
19 to figure out if that immunization certification is
20 required?

21 A. Correct.

22 Q. Okay. And if, in fact, there was a
23 requirement that the -- in the market that the
24 pharmacist new hire be immunization certified,
25 would you assume that the job posting would list it

1 as a minimal qualification?

2 A. I assume a lot of things. But, yes.

3 Q. Okay. In other words, part of what I'm
4 asking you is merely listing for a new hire it
5 being -- immunization certified being a preferred
6 qualification wouldn't indicate that it's a
7 mandatory qualification; is that fair?

8 A. That's fair.

9 Q. And so, for instance, I'm going to show
10 you a job posting that is attached to Exhibit 5 to
11 the Second Amended Complaint, second page. I'm
12 going to show you right here (indicating).

13 It's -- if you look at the top of the
14 page, it says, Pharmacy manager in Dallas at
15 Wal-Mart.

16 Now, I assume you have no idea of who
17 prepared this document or anything about it; right?

18 A. Correct.

19 Q. Okay. And you couldn't possibly speak to
20 the intent of the author of this document; right?

21 A. Correct. Could you?

22 Q. But you -- fortunately I get to ask the
23 questions.

24 A. You get to ask the questions and not
25 answer them. Okay. I couldn't resist. Sorry.

1 Q. More laughter, for the record.

2 The job title -- I'm sorry.

3 The -- it says, Additional preferred
4 qualifications -- it says preferred, not minimum.
5 It says, Current immunization certification.

6 Do you see that?

7 A. No, I can't. My eyes aren't that good.
8 Sorry.

9 Q. You're now reaching and looking at it
10 closer?

11 A. Yes. Now I can read it.

12 The question becomes the --

13 Q. So that document, based on your testimony
14 obviously doesn't indicate that being immunization
15 certified is mandatory; correct?

16 A. What is the date of the document?

17 Q. Well, okay. As of the date of the
18 document, which is --

19 A. No. That's when it was filed.

20 Q. No, I know. November 4th, 2014.

21 A. Okay. November 4th, 2014. All right.
22 Yes.

23 Q. As of November 4th, 2014, this document in
24 your mind, does not indicate that taking the
25 training course is mandatory; correct?

1 A. In Dallas, that's correct.

2 Q. Okay. And because the words "preferred
3 qualification" in your mind don't mean mandatory;
4 right?

5 A. Right.

6 Q. Okay. Now, getting back to my other
7 question, which was -- what I'm trying to ask you
8 is at the time that you learned about the
9 availability of the training course, you had no
10 idea who designed it, what communications were
11 going down from top management, let's say from
12 divisionals to regionals, as to the course?

13 A. Well, the course had been designed by the
14 APHA. That was stated. That's been around for
15 quite a long time. So, no, I had no idea what was
16 going on with top management.

17 Q. Okay. So here's really what I'm trying to
18 ask you, which is that as we sit here today, you
19 don't have any idea about how the course was rolled
20 out in terms of communications from divisional
21 managers to regional managers to market managers.
22 Do you follow me?

23 A. I follow.

24 Q. You really have no idea how that happened;
25 right?

1 A. I do not.

2 Q. And you really have no idea of the intent
3 of top management in terms of whether the course
4 was mandatory or not other than the e-mail you were
5 served -- received in 2013 that it was not
6 mandatory; is that correct?

7 A. That's correct.

8 Q. Okay. So there was no -- well, strike
9 that.

10 Based on your experience talking to
11 Mr. Smith, does it appear to you that market
12 managers were given the discretion of how they
13 communicated about the training course?

14 A. No.

15 Q. Why do you not think that's true?

16 A. Well, based on the things that Mr. Smith
17 said, and you -- I just -- you take these things as
18 being accurate because he's your supervisor, your
19 boss.

20 Pretty much Mr. Smith indicated that he
21 didn't do anything without the approval of upper
22 management in lots of different things. And this
23 particular one, did he specifically make that
24 statement or at that specific time? I have to say,
25 no.

1 But Wal-Mart is so extremely
2 compartmentalized that pretty much the top guy
3 tells the next guy down who tells the next guy down
4 who tells the next guy down who tells the next guy
5 down, and probably -- and eventually gets to the
6 bottom of the food chain, which in this case is me.

7 Q. Okay. That would be speculation on your
8 part; right?

9 A. That would be speculation on my part.

10 Q. It would be speculation on your part about
11 how divisional managers communicated with regional
12 managers; correct?

13 A. Correct.

14 Q. It would be speculation on your part how
15 regional managers communicated with market
16 managers; correct?

17 A. Correct.

18 Q. And you really have no idea how that
19 occurred anywhere throughout the United States;
20 right?

21 A. Correct.

22 MR. YSLAS: Let's take a break.

23 (Recess taken, from 2:49 to 2:54.)

24 BY MR. YSLAS:

25 ///

1 Q. And those --

2 A. I have one. I have one that's technically
3 stationed at my store. You're right. Irene.

4 Q. Okay. And Irene, how often does she work?

5 A. This is a source of some -- some
6 aggravation on Michael's part. She rarely works at
7 my store. I do not know what her regular schedule
8 is because the schedules are done out of Richmond,
9 by a young -- by a lady by the name of
10 Vanessa Rose, who does the schedules for our
11 district, and I understand a number of others.

12 Q. Let me try it this way: What's the -- as
13 to personal knowledge, what's the least amount of
14 part-time pharmacists will work for Wal-Mart? In
15 other words, once a week? Twice a week?

16 A. I don't know. I'm sure that there are
17 some that only work once a week. I really don't
18 know. I don't deal with the scheduling on that
19 issue, so it's not a question that I can answer.

20 Q. Now, the training course is approximately
21 a total of 20 hours a week -- 20 hours total;
22 right?

23 A. Well, there's a third part that's required
24 but is separate, of course, and that's the
25 CPR/basic life support course that's required

1 before you can give immunizations also.

2 Q. Okay. Leaving apart the CPR portion of
3 it, the immunization training course is
4 approximately 20 hours; right?

5 A. Yes.

6 Q. So if somebody did all of the live portion
7 and did all the self-study, let's say, 20 hours,
8 and then worked as a part-time employee one day in
9 a week, that would be approximately 28 hours;
10 right?

11 A. Approximately.

12 Q. So less than 40 hours a week?

13 A. Less than 40 hours a week.

14 Q. Other than the e-mail that you described
15 in 2013, and the communication you received in your
16 own market, you don't know about how the program
17 was communicated elsewhere; correct?

18 A. No.

19 Q. That's --

20 A. Correct. No, I don't know. Correct.

21 Q. Okay.

22 A. With regard to that last thing, can I say
23 a couple of other things?

24 Q. If you want to.

25 A. I would like to.

1 mandatory.

2 Q. Okay. I understand that's your
3 interpretation.

4 A. And they did that for everybody.

5 Q. I understand.

6 A. Okay.

7 Q. To your knowledge, no pharmacist at
8 Wal-Mart has been directly told that they would be
9 terminated, their hours reduced or transferred to
10 another store if they didn't take the training
11 course; correct?

12 A. Correct.

13 MR. YSLAS: I don't have any other
14 questions.

15 MR. BUCK: Let me just take a minute to
16 review. I might have some follow-up.

17 MR. YSLAS: Okay.

18 (Recess taken, from 3:16 to 3:19.)

19 MR. BUCK: Back on the record.

20 EXAMINATION BY MR. BUCK

21 BY MR. BUCK:

22 Q. Michael, you spoke about a few different
23 things that you believe that made the training
24 course not voluntary.

25 Do you remember that?

1 REPORTER CERTIFICATE

2 I, LORRIE L. MARCHANT, Certified Shorthand
3 Reporter, Certificate No. 10523, for the State of
4 California, hereby certify that MICHAEL DENHAM was
5 by me duly sworn/affirmed to testify to the truth,
6 the whole truth and nothing but the truth in the
7 within-entitled cause; that said deposition was
8 taken at the time and place herein named; that the
9 deposition is a true record of the witness's
10 testimony as reported to the best of my ability by
11 me, a duly certified shorthand reporter and a
12 disinterested person, and was thereafter transcribed
13 under my direction into typewriting by computer;
14 that request [X] was [] was not made to read and
15 correct said deposition.

16 I further certify that I am not interested
17 in the outcome of said action, nor connected with,
18 nor related to any of the parties in said action,
19 nor to their respective counsel.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand this 8th day of July, 2015.

22

23

LORRIE L. MARCHANT, RMR, CRR, CCRR, CLR

24 Certified Shorthand Reporter #10523

25

EXHIBIT H

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

AFROUZ NIKMANESH, ELVIS	)	CASE NO.:
ATENCIO, ANNA NGUYEN, AND	)	8:15-cv-00202 AG-JCG
EFFIE SPENTZOS, on behalf of)	
themselves, the general)	
public, and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
WAL-MART STORES, INC., a)	
Delaware corporation, and)	
WAL-MART ASSOCIATES, INC., a)	
Delaware corporation, and)	
DOES 1 through 10, inclusive,)	
)	
Defendants.)	
)	

DEPOSITION OF BRIAN NGUYEN
Wednesday, July 8, 2015
Los Angeles, California

Reported By:
Jan M. Roper, RPR,
CSR No. 5705
File No.: 150708JR

1 them all.

2 Q. Those are the only ones you can remember right
3 now?

4 A. Yes.

5 Q. Ms. Fisher's authority was limited to
6 supervising those 10 to 12 pharmacies; correct?

7 A. Yes.

8 Q. At some point did your market manager change
9 from Ms. Fisher to someone else?

10 A. Yes.

11 Q. Who did it change to?

12 A. Change it to MaryAnn Dabney.

13 Q. When was that?

14 A. I believe by the end of last year, 2014.

15 Q. Ms. Fisher's -- those 10 to 12 stores you're
16 referring to, they're all in Southern California;
17 correct?

18 A. Yes.

19 Q. And at some point at the end of 2014, your
20 market manager switched to Ms. Dabney; correct?

21 A. Yes.

22 Q. And Ms. Dabney was supervising the same 10 to 12
23 markets that Ms. Fisher was supervising; correct?

24 A. No.

25 Q. What pharmacies was Ms. Dabney supervising?

1 A. Okay.

2 Q. So you've never spoken to Mr. Patel, so this may
3 seem like a little bit of an obvious question, but I just
4 want to get a clean record of it.

5 You've never spoken to Mr. Patel about the
6 training course; correct?

7 A. Correct.

8 Q. You've never spoken to any divisional manager
9 about the training course; correct?

10 A. Right.

11 Q. Have you ever spoken to any divisional manager
12 at all?

13 A. No.

14 Q. So you've never spoken to any divisional manager
15 about the training course; correct?

16 A. Right.

17 Q. Have you ever spoken to Mr. Chung at all?

18 A. Yes.

19 Q. How many occasions?

20 A. Quite a few.

21 Q. Have you ever spoken to Mr. Chung about the
22 training course?

23 A. No.

24 Q. So you've never spoken to Mr. Training -- you've
25 never spoken to Mr. Chung about the training course;

1 Q. Okay. He told you that Wal-Mart didn't pay for
2 the self-study portion; correct?

3 A. Yes.

4 Q. Did he tell you -- he didn't tell you where he
5 got that information from; right?

6 A. Right.

7 Q. Who else was present during that dinner?

8 A. A lot of store manager in the region.

9 Q. Do you remember who?

10 A. I remember -- I know his first name but not last
11 name is Kevin. Jason Berg.

12 MR. PARCELLS: Bird?

13 THE WITNESS: Berg, B-e-r-g. Yeah, that's the
14 two name that I remember. I don't remember the rest.

15 BY MR. YSLAS:

16 Q. That's all you can remember about that
17 conversation; correct?

18 A. Yes.

19 Q. Okay. So you have no idea where Mr. Negrete
20 even formulated that statement; in other words, where he
21 got his information from?

22 A. That is correct.

23 Q. Okay. Now, you've never spoken to any market
24 manager outside of Southern California; correct?

25 A. Correct.

1 Q. You don't even know the names of any market
2 managers outside of Southern California; correct?

3 A. Correct.

4 Q. And other than Mr. Chung and Ms. Bhatt, do you
5 know the names of any other regional supervisors?

6 A. No.

7 Q. You've never spoken to any regional supervisors
8 other than Mr. Chung and Ms. Bhatt; correct?

9 A. Correct.

10 Q. And have you ever spoken to any divisional
11 managers?

12 A. No.

13 Q. And other than Mr. Patel, you don't know the
14 names of any other divisional managers; correct?

15 A. Correct.

16 Q. And you really have no idea how Health &
17 Wellness is even structured throughout California and the
18 United States; is that fair to say?

19 A. Yes.

20 Q. So you don't know anything about the reporting
21 relationship from the divisional managers to the regional
22 managers to market managers; correct?

23 A. Correct.

24 Q. Do you know how many pharmacies there are in
25 California?

1 what the practices were; correct?

2 A. You mean the nonexempt?

3 Q. No, not the nonexempt. Other than the fact that
4 you know that they are all hourly, nonexempt --

5 A. Okay.

6 Q. -- so other than that --

7 A. Other than that, yes.

8 Q. Okay. So let me make sure I get a transcript
9 I'm trying to keep here. So let me just rephrase it.

10 Other than the fact that you know that
11 pharmacists in California are hourly, nonexempt, outside
12 of the market that you worked in in Southern California,
13 you have no idea what the practices were in those other
14 markets; correct?

15 A. Correct.

16 Q. Okay. And you really have no idea what
17 communications went on between market managers and
18 divisional managers; correct?

19 A. Right. Correct.

20 Q. And even in your own market, you really don't
21 know what the communications have been between the market
22 manager you reported to, Ms. Fisher or Ms. Dabney, and
23 their supervisor, the regional manager; correct?

24 A. Correct.

25 Q. You, in your declaration in Paragraph 7, state,

1 every pharmacist had to take the training course;
2 correct?

3 A. No. In the beginning, it has to be at least one
4 pharmacist per pharmacy to have to take that one, and
5 then eventually they going to make the staff pharmacist
6 one day in due time.

7 Q. Okay. The e-mail itself said that at least one
8 pharmacist per pharmacy needed to be immunization-
9 certified; correct?

10 A. Correct.

11 Q. The e-mail did not say that every single
12 pharmacist had to be immunization-certified; correct?

13 A. That's in a later e-mail.

14 Q. In a later e-mail did Ms. Fisher state that
15 every single pharmacist had to be immunization-certified?

16 A. He said that your staff need to be certified
17 too.

18 Q. Your staff in your individual pharmacy?

19 A. Right.

20 Q. So other than the e-mails you received from
21 Ms. Fisher and the statement she made to you, is it fair
22 to say that those are the reasons that you believe that
23 taking the training course was mandatory? Right?

24 A. Yes.

25 Q. And there's no other document out there that you

1 think states that taking the training course is
2 mandatory; right?

3 A. They all say in there it's voluntarily, but when
4 the e-mail send down, it says that you have -- they don't
5 give us a choice to opt out.

6 Q. Okay. So we will discuss the e-mail. What I'm
7 focusing on now is any other documents. I want to make
8 sure I understand.

9 I think you just testified to it clearly, but to

10 make sure I understand: In your mind there's no other
11 document out there that you've seen or are aware of that,
12 in your mind, demonstrates that taking the training
13 course is mandatory?

14 A. In my mind, no.

15 Q. Okay. And there's no other statement by anyone
16 other than Ms. Fisher that caused you to believe that
17 taking the training course is mandatory; correct?

18 A. Correct.

19 Q. In fact, there were documents that you've seen
20 that you just referenced that indicated that taking the
21 training course was voluntary; correct?

22 A. I'm sorry. Rephrase that again.

23 Q. Sure. Just a minute. I'm just going to read
24 what you testified to. I've got it in front of me. I
25 asked you:

1 correct?

2 A. Right.

3 Q. So, for instance, the market in Northern
4 California, you have no idea who the market manager is or
5 what statements they may or may not have made to pharmacy
6 managers about whether they had to take the training
7 course; correct?

8 A. Correct.

9 Q. Your knowledge is limited to what Ms. Fisher
10 told you directly and this statement by Anna made at the
11 training course; correct?

12 A. Correct.

13 Q. Did Ms. Fisher -- Ms. Fisher did not tell you
14 how she formulated the view that taking the training
15 course was mandatory; right?

16 A. Right.

17 Q. So you have no idea if a regional manager told
18 her that; right?

19 A. Right.

20 Q. You have no idea if a divisional manager told
21 the regional manager and then told Ms. Fisher; correct?

22 A. Correct.

23 Q. All you really know is what Ms. Fisher told you?

24 A. Correct.

25 Q. Now, you're not aware of any written policy, in

1 Q. Let me -- I'm turning right now to the second
2 amended complaint, which is Exhibit 8 -- Exhibit 8 to
3 Ms. Nikmanesh's deposition, which is Exhibit 5 to the
4 second amended complaint. And I'm going to flip to the
5 third page, and it says -- it's a posting for pharmacy
6 managers in Dallas.

7 Let me just show you. I'm going to point here
8 to the bottom where it says Additional -- first it
9 says -- pardon my reach -- Minimum Qualifications, and it
10 lists BS in pharmacy, then it lists pharmacy license.

11 Do you see that?

12 A. Yes.

13 Q. And then for Additional Preferred
14 Qualifications -- not minimum but preferred -- it says:
15 One year U.S. pharmacy experience and current
16 immunization certification.

17 Do you see that?

18 A. Yes.

19 Q. In your mind, the word "preferred" does not mean
20 the same thing as "minimum" qualification; right?

21 A. Right.

22 Q. Okay. So, in other words, in your mind, this
23 job posting reflects that being immunization-certified is
24 not a mandatory requirement; is that fair to say?

25 A. It is.

1 Q. That's fair to say; right?

2 A. It is fair to say, yes.

3 Q. Because the word "preferred" means something
4 different than "mandatory"; correct?

5 A. Right.

6 Q. Okay.

7 A. But, of course, it's a job posting without -- if
8 you compare two pharmacists that applying for the same
9 position, if one have immunization certificate and the
10 other one doesn't have and, unfortunately, they would
11 hire the one with the immunization certification.

12 Q. Because it's more preferable; right?

13 A. Right.

14 Q. If there were a job posting out there that
15 listed nothing for either at a minimum or preferred
16 qualification, then there would be no advantage to having
17 an immunization certification, in your mind; right?

18 A. Right.

19 Q. Looking at Exhibit 6, which is a job
20 description, same thing down here, it says, "Preferred
21 Qualifications: Current immunization certification."

22 Do you see that?

23 A. Yes.

24 Q. So, in your mind, this job description does not
25 reflect that being immunization-certified is required; is

1 that correct?

2 A. Right. It's preferred.

3 Q. Which means different than required; right?

4 A. Right.

5 Q. I assume -- we looked at the job posting and the
6 job description.

7 You have no idea who prepared those documents;
8 right?

9 A. Right.

10 Q. Okay. You have no idea how they were prepared
11 or what the intent was; correct?

12 A. Correct.

13 Q. And turning to a confidential exhibit, which is
14 Exhibit 3 to the second amended complaint, which was
15 marked as Exhibit 8 to Ms. Nikmanesh's deposition, just
16 briefly, this is the PAID toolkit?

17 A. Yes.

18 Q. You have no idea who prepared that document or
19 what the intent of that document was; correct?

20 A. Right. Correct.

21 Q. Other than the fact that it sets out procedures
22 for administering immunization certifications; right?

23 A. Yes, and the checklist.

24 Q. Nothing in that document or the existence of
25 that document that makes you think taking the training

1 course or becoming immunization-certified is mandatory;
2 correct?

3 A. Right.

4 Q. As we sit here today, you have no idea if some
5 uniform nationwide mandate went out to all pharmacists
6 from the top requiring them to take the training course;
7 correct?

8 A. I have no idea.

9 Q. Okay. Really, all you know is what Ms. Fisher
10 told you in an e-mail and a conversation?

11 A. That is correct.

12 Q. You have no idea how the conversations or
13 communications went down from divisionals to regionals to
14 market managers throughout the country; correct?

15 A. Correct.

16 Q. Did you ever speak to anyone on the Health &
17 Wellness quality team?

18 A. About what?

19 Q. Anything.

20 A. Anything? Yes. I talked to Mike Peerson, but
21 it's regarding a different issue because Mike Peerson --
22 by the way, Mike Peerson used to be my regional manager
23 when -- it was in 2002.

24 Q. You never spoke to Mr. Peerson about the
25 training course; correct?

1 Q. So Ms. Fisher. When Ms. Fisher told you that
2 you had to take the training course, she did not say if
3 you don't take the course, your employment will be
4 terminated; correct?

5 A. Correct.

6 Q. Ms. Fisher did not tell you that if you don't
7 take the training course, your hours will be reduced;
8 correct?

9 A. Not for me, no.

10 Q. And you're not aware of Ms. Dabney telling
11 anybody else if they don't take the training course,
12 you'll be terminated -- oh, sorry. Strike that.

13 Ms. Dabney did not tell you that if you don't
14 take the training course, you will be transferred to a
15 different store; correct?

16 MR. PARCELLS: Excuse me. Are you referring to
17 Dabney or Fisher?

18 MR. YSLAS: Fisher. Sorry.

19 Q. Ms. Fisher did not tell you that --

20 A. No, she did not tell me anything except that she
21 just put in the training class for me and tell me that I
22 need to go.

23 Q. Okay. So one last just -- I need to get a clean
24 record.

25 A. Okay.

1 Q. Ms. Dabney did not -- Ms. Fisher did not tell
2 you that if you take -- if you don't take the training
3 course to become immunization-certified, you'll be
4 transferred to another store; correct?

5 A. Correct.

6 Q. In fact, you're not aware of any pharmacist
7 being told if they don't take the training course,
8 they'll be terminated or transferred or have their hours
9 reduced; correct?

10 A. I have knowledge of one.

11 Q. Who's that?

12 A. My wife.

13 Q. Who told her that?

14 A. Her pharmacy manager.

15 Q. Who's that?

16 A. Thanh, T-h-a-n -- T-h-a-n-h, and his last name
17 is Trinh, T-r-i-n-h.

18 Q. Okay. You didn't personally hear that; right?

19 A. I did not personally hear that, but my wife told
20 me.

21 Q. What did she tell you specifically?

22 A. She told me that -- because that one day that
23 she come back and come home and she was -- said that she
24 have to study the immunization, I was, like: Why? You
25 don't -- why do you taking the class now?

1 A. Yes.

2 Q. Prior to that time that you took the course, do
3 you recall if you'd taken any continuing education before
4 then in that January 2013-December 2013 time frame?

5 A. Yes.

6 Q. Do you recall approximately how many hours?

7 A. I do it every single month. So each month is
8 one credit. So until then it's about 12 -- 11 or 12.

9 Q. So prior to taking the training course in
10 December 2013, you had not completed your 30 hours;
11 correct?

12 A. Correct.

13 Q. You'd completed approximately 11 or 12 hours;
14 right?

15 A. Correct.

16 Q. Did you receive continuing education credit for
17 taking the training course?

18 A. Yes.

19 Q. Approximately how many hours?

20 A. I don't remember. I think it's 18 or 20.

21 Q. So by taking the training course, you received
22 the benefit of 18 to 20 hours of continuing education
23 credit; correct?

24 A. Yes.

25 Q. In Paragraph 4 you've got statements about when

REPORTER'S CERTIFICATE

I, Jan M. Roper, a Certified Shorthand Reporter
No. 5705, do hereby certify:

That, prior to being examined, the witness named
in the foregoing deposition, BRIAN NGUYEN, was by me duly
sworn to testify the truth, the whole truth, and nothing
but the truth.

That said deposition was taken down by me in
shorthand at the time and place therein named and
thereafter transcribed under my direction, and I hereby
certify that the foregoing deposition is a true and
correct transcript of my shorthand notes so taken.

I certify that a request has been made by, or on
behalf of, the witness to review, correct and sign the
transcript of these proceedings.

I further certify that I am neither counsel for
nor related to any party to said action nor in anywise
interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed
my name this 9th day of July, 2015.

JAN M. ROPER, RPR, CSR NO. 5705

EXHIBIT I

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

AFROUZ NIKMANESH, ELVIS) CASE NO.:
ATENCIO, ANNA NGUYEN, AND) 8:15-cv-00202 AG-JCG
EFFIE SPENTZOS, on behalf of)
themselves, the general)
public, and all others)
similarly situated,)
)
Plaintiffs,)
)
vs.)
)
WAL-MART STORES, INC., a)
Delaware corporation, and)
WAL-MART ASSOCIATES, INC., a)
Delaware corporation, and)
DOES 1 through 10, inclusive,)
)
Defendants.)
_____)

DEPOSITION OF KHANH NGUYEN
Wednesday, July 8, 2015
Los Angeles, California

Reported By:
Jan M. Roper, RPR,
CSR No. 5705
File No.: 150708JR

1 she supervise?

2 A. I think she belong to Riverside.

3 Q. Do you know what stores Ms. Fisher supervised
4 while she was your market manager?

5 A. My husband's store, also, the 3248.

6 Q. Which is La Habra?

7 A. La Habra.

8 Q. Do you know any other stores she supervised?

9 A. I don't recall.

10 Q. Okay. Ms. Fisher's authority was limited to the
11 stores she supervised; correct?

12 A. Uh-huh.

13 Q. Yes?

14 A. Can you -- I don't understand that question.

15 Q. Ms. Fisher supervised approximately 10 to 12
16 stores; is that correct?

17 A. I believe, yes.

18 Q. Okay. And she did not have the authority to
19 supervise stores other than those 10 to 12 stores;
20 correct?

21 MR. PARCELLS: If you know.

22 THE WITNESS: I don't know.

23 BY MR. YSLAS:

24 Q. Okay. So as we sit here today, you don't know
25 the scope of Ms. Fisher's authority; is that true?

1 Q. Okay. So you never spoke to Ms. Fisher directly
2 about the training course; correct?

3 A. Correct.

4 Q. So Ms. Fisher never told you that you had to
5 take the training course; correct?

6 A. She e-mailed to pharmacist -- pharmacist
7 manager, and then the pharmacist manager told me that I
8 have to.

9 Q. Okay. So Ms. Fisher never directly told you,
10 directly, that you had to take the training course; is
11 that right?

12 A. No.

13 Q. No, it's not right?

14 A. Directly, you mean the e-mail or verbally?

15 Q. Let's start there. Ms. Fisher never directly
16 told you in a conversation, not e-mail, that you had to
17 take the course; correct?

18 A. Correct.

19 Q. Ms. --

20 A. But with the e-mail, yes.

21 Q. Okay. With the e-mail. Did Ms. Fisher send the
22 e-mail directly to you?

23 A. I believe I receive the e-mail with the date
24 that I have to attend with no choice.

25 Q. Okay. And was that e-mail directly to you, or

1 A. Yes.

2 Q. Did Mr. Trinh specifically tell you that anyone
3 at Wal-Mart would remove you from the position of staff
4 pharmacist if you did not take the training course?

5 A. He said Wal-Mart will.

6 Q. Did Mr. Trinh tell you where he gained that
7 understanding?

8 A. No.

9 Q. So you have no idea who told him that; right?

10 A. No. But I know I have to.

11 Q. Okay. Because Mr. Trinh told you and because
12 there was an e-mail from Ms. Fisher; right?

13 A. Yes.

14 Q. Other than the conversation Mr. Trinh had with
15 you and the e-mail from Ms. Fisher, nobody else told you
16 that you had to take the training course; right?

17 A. I have two date that I have to pick. It's like
18 have to. I have no choice.

19 Q. I understand the date.

20 A. Yes.

21 Q. Right now I'm talking about the people, okay,
22 that told you.

23 Do you understand?

24 A. Yes.

25 Q. So I'm trying to make sure I understand. The

1 A. Yes.

2 Q. Okay. Have you ever spoken to Mr. Chung about
3 the training course?

4 A. No.

5 Q. So Mr. Chung has never told you that taking the
6 training course is mandatory; correct?

7 A. Yes.

8 Q. Have you ever spoken to Ms. Bhatt or
9 communicated with Ms. Bhatt about the training course?

10 A. She stopped by two month before Stephanie
11 arranged the course. She asked me do I sign up for the
12 vaccination. Have I been vaccinate customer.

13 I say that I wait to make it legalized for the
14 2015, because I feel uncomfortable during that time.

15 Q. What do you mean you were making it -- that --

16 A. Because I heard that 2015 every pharmacist have
17 to do it.

18 Q. I see. And what did Ms. Bhatt say to you?

19 A. She say after that -- she didn't say anything.

20 Q. Ms. Bhatt never told you that taking the
21 training course was mandatory; correct?

22 A. Yes.

23 Q. What did Ms. Bhatt say in response to your
24 statement about when the course would be required in
25 2015?

1 A. No.

2 Q. True?

3 A. True.

4 Q. When Mr. Chung was your regional manager, do you
5 know who he reported to?

6 A. No.

7 Q. And when Ms. Bhatt was your regional manager, do
8 you know what -- who she reported to?

9 A. No.

10 Q. Okay. So you don't -- do you know the names of
11 any divisional managers at Wal-Mart?

12 A. (Witness shakes head from side to side.)

13 Q. No?

14 A. No.

15 Q. You have no idea what the practices are in Wal-
16 Mart other than inside the store that you worked in;
17 right?

18 A. Yes.

19 Q. So you have no idea if there was ever a uniform
20 policy stating that Wal-Mart pharmacists must be
21 immunization-certified or take the course; correct?

22 A. I heard you have to.

23 Q. You heard you have to. But you don't know if
24 that -- there was a uniform policy applying to everyone
25 in the United States that required it; right?

1 A. I heard that later on if you not certified, they
2 not going to hire you, or if you not certified, they not
3 going to keep you. That's what I heard.

4 Q. Okay. That's what you heard later?

5 A. Uh-huh.

6 Q. Yes?

7 A. I heard during that time.

8 Q. Who did you hear it from?

9 A. From pharmacist, manager -- pharmacist manager.
10 That's the -- during that time that we have to take it.
11 I'm the last patch to take it.

12 Q. Who told you that specifically? What are the
13 names?

14 A. I don't remember pharmacist. We talk, but we
15 never meet each other. Only on the phone. And the
16 pharmacist manager he told me that, too, you have to take
17 it.

18 Q. The pharmacy manager --

19 A. Thanh Trinh.

20 Q. Right. But you don't know for sure if there was
21 a policy out there that applied to everyone in the United
22 States that required them to take it; correct?

23 A. Yes.

24 Q. Is that correct?

25 A. Yes. I don't know.

1 Q. You don't know. And you never saw a writing, a
2 physical writing --

3 A. Yes.

4 Q. -- that stated or indicated in any way that
5 taking the training course was required; correct?

6 A. Yes.

7 Q. That's correct; right?

8 A. Yes.

9 Q. And you're not aware of any document that in any
10 way in your mind indicates that taking the training
11 course or being immunization-certified is required;
12 correct?

13 A. Yes, but the document make me have to do it.
14 That's the only thing I see.

15 Q. The only thing you saw is the e-mail that you're
16 referring to --

17 A. Yes.

18 Q. -- right?

19 That's the only writing; right?

20 A. Yes.

21 Q. Okay. So Ms. Fisher never told you that all
22 pharmacists had to be immunization-certified; correct?

23 A. I say I only see the mail, but she didn't say
24 directly.

25 Q. She did not say directly -- Ms. Fisher did not

1 directly say to you that all pharmacists had to be
2 immunization-certified; correct?

3 A. Yes.

4 Q. That's correct; right?

5 A. But the pharmacist manager told me I have to,
6 yes.

7 Q. But Ms. Fisher never told you that all
8 pharmacists had to be immunization-certified; correct?

9 A. Yes.

10 Q. And you took the home study and test portions of
11 the training course in November of 2014 and December of
12 2014; correct?

13 A. Yes.

14 Q. Were you a part-time employee or full-time
15 employee?

16 A. I'm a full-time.

17 Q. And you worked approximately 40 hours a week?

18 A. 40 exactly.

19 Q. Now, November 26, 2014, that would have been
20 around Thanksgiving; right?

21 A. (Witness nods head up and down.)

22 Q. Right?

23 A. Yes.

24 Q. Do you recall if you worked a full workweek that
25 week?

1 A. I don't remember.

2 Q. You'd have to look at the records; right?

3 A. Yes.

4 Q. And when you took the home study, do you
5 remember specifically how many hours a day you took it or
6 what days you took it?

7 A. I know more or less one week.

8 Q. Okay. And did you take it -- did you -- in your
9 declaration here, it says it took you approximately 15
10 hours to complete it.

11 Do you recall the -- how many hours a day you
12 studied?

13 A. Maybe like one-hour-something, two hour. I know
14 it's -- I know it's more or less than one week because I
15 cannot sit still for the whole day.

16 Q. But you don't remember how many hours you
17 worked on -- did the home study on one day versus another
18 day; right?

19 A. No.

20 Q. Is that correct?

21 A. Yes.

22 Q. Let me make sure I understand. I'll ask you for
23 a "correct" answer, if it's correct.

24 A. Yes.

25 Q. You don't know how many hours a day on a

1 A. I don't know.

2 Q. Do you know who developed the course?

3 A. No.

4 Q. You've never spoken to anyone in the Health &
5 Wellness quality team; right?

6 A. No.

7 Q. Is that true?

8 A. This is what the pharmacy manager always have a
9 meeting on the phone with the regional -- with the
10 district marketing manager at least twice a week or once
11 a week, but not with the staff pharmacists. So,
12 therefore, no.

13 Q. Okay. So you were not on the phone calls --

14 A. No.

15 Q. You were not on the phone calls between the
16 pharmacy manager and the regional manager; correct?

17 A. Yes.

18 Q. You were not on the phone calls with the
19 district manager and the regional manager; correct?

20 A. Yes.

21 Q. The reason you believe taking the training
22 course was mandatory was the statement Mr. Trinh made and
23 the e-mail you received from Ms. Fisher; correct?

24 A. Yes.

25 Q. And nothing else; right?

1 A. Yes.

2 Q. There's no -- okay. You've never spoken to a
3 woman named Pam Piotrowski, P-i-o-t-r-o-w-s-k-i; correct?

4 A. Yes.

5 Q. You've never spoken to a woman named Susanne
6 Hiland, H-i-l-a-n-d; correct?

7 A. Yes.

8 Q. You've never spoken to a woman named JoLynn
9 Coleman; correct?

10 A. Yes.

11 Q. You've never spoken to Paul Beahm; right?

12 A. Yes.

13 Q. You've never spoken to a woman named Deanna
14 Seiler, S-e-i-l-e-r; correct?

15 A. Yes.

16 Q. To maintain your license as a pharmacist, you
17 need to take continuing education; right?

18 A. Yes.

19 Q. You have to do 30 hours of continuing education
20 every two years; correct?

21 A. Exactly, yeah.

22 Q. And when is your two-year period? What year and
23 month?

24 A. I just had to renew my license in June '15.

25 Q. 2015. So between June of 2013 to June 2015, you

1 had to do 30 hours of continuing education; correct?

2 A. Yes.

3 Q. When you took the training course in two
4 thousand -- November and December of 2014, how many hours
5 of continuing education had you done just before you took
6 the course? Do you remember?

7 A. 22, more or less.

8 Q. Before you took the training course?

9 A. Yes.

10 Q. So at the time you took the training course, you
11 had not finished the 30 hours; right?

12 A. Yes.

13 Q. So as a result of taking the training course,
14 you were able to complete your continuing education
15 credit; right?

16 A. Yes. I don't know -- yes.

17 Q. So you received credit for taking the training
18 course; right?

19 A. Yes.

20 Q. Continuing education credit; right?

21 A. Yes.

22 Q. Do you administer immunizations now at your
23 current job?

24 A. No.

25 Q. Mr. Trinh, the conversation you had with him --

1 Mr. Trinh was a pharmacy manager; right?

2 A. Yes.

3 Q. I'm going to ask you very specifically what he
4 said. We've talked about it. Now I want to ask a couple
5 of very specific follow-up questions. Okay?

6 A. Yes.

7 Q. Mr. Trinh never specifically said you will be
8 terminated if you don't take the course; correct?

9 A. He say, "You better take it, Khanh, or they go
10 remove you."

11 Q. Did he say who "they" are?

12 A. No. He just say that Wal-Mart. Usually when we
13 talk, "they" is Wal-Mart.

14 Q. Okay. And that's all he said; right?

15 A. Yes.

16 Q. Mr. Trinh did not tell you that your hours would
17 be reduced if you did not take the training course?

18 A. He say they might do that. And he even picked a
19 date for me.

20 Q. Did he tell you anything else?

21 A. No.

22 Q. Do you know if Mr. Trinh made these statements
23 to anybody else besides yourself?

24 A. The store, only two of us. We've been working
25 for 13 years. So it's only two of us as a pharmacist.

1 Q. Who is the other pharmacist?

2 A. Mr. Trinh.

3 Q. Oh, right. So I understand. All you know about
4 is what happened in your own store; right?

5 A. Yes.

6 Q. And all you know is what was told to you; right?

7 A. Yes.

8 Q. So you're not aware of Mr. Trinh making those
9 statements to anybody else; right?

10 A. Yes. But I know my husband told me I better
11 take it too. I have no choice.

12 Q. And other than Mr. Trinh -- other than
13 Mr. Trinh -- you're not aware of anybody else at Wal-Mart
14 telling a pharmacist if they don't take the training
15 course, they'll be terminated; correct?

16 A. Besides my husband? Does he count as a manager,
17 pharmacist manager?

18 Q. Did somebody specifically tell your husband
19 that?

20 A. No. He told me that I better take it.

21 Q. Okay. I'm not asking you if he said you better
22 take it. What I'm asking about is your own knowledge.

23 Did -- are you -- you're not aware of any other
24 person, besides Mr. Trinh in the conversation he had with
25 you, anybody else in management telling a pharmacist if

1 they don't take the training course, they'll be
2 terminated; is that correct?

3 A. Yes.

4 Q. And you're not aware of anyone else besides
5 Mr. Trinh ever saying to another pharmacist that if they
6 don't take the training course or become immunization-
7 certified, their hours will be reduced; correct?

8 A. But because of the e-mail, I know it's serious.
9 So, therefore, I have to take it.

10 Q. I understand. I'm asking a very specific
11 question about what people said.

12 Do you understand?

13 A. Yes.

14 Q. My question is: Other than Mr. Trinh, to your
15 knowledge, nobody else in management said to another
16 pharmacist, If you don't take the training course or
17 become immunization-certified, your hours will be
18 reduced; correct?

19 A. Yes.

20 Q. Other than Mr. Trinh, you're not aware of
21 anybody else in management saying, If you don't take the
22 training course, you'll be transferred to another store;
23 correct?

24 A. Yes.

25 Q. Other than what you've already told me, is there

1 anything else, in your mind, that shows, demonstrates,
2 that taking the training course was -- or becoming
3 immunization-certified was required?

4 A. No.

5 Q. And those things are, just to recap, the e-mail
6 that you described from Ms. Fisher?

7 A. Yes.

8 Q. The one statement from Mr. Trinh; right?

9 A. Yes.

10 Q. And your husband telling you you better take it;
11 right?

12 A. Yes.

13 Q. And nothing else; right?

14 A. Yes.

15 Q. And you don't know where Ms. Fisher got the idea
16 that taking the training course was mandatory; right?

17 A. Yes.

18 Q. And you don't know where Mr. Trinh got that idea
19 either; correct?

20 A. Yes.

21 Q. When you took the training course in November
22 and December of 2014, what was your hourly rate of pay,
23 approximately?

24 A. You mean how much did I make?

25 Q. Yes.

REPORTER'S CERTIFICATE

I, Jan M. Roper, a Certified Shorthand Reporter
No. 5705, do hereby certify:

That, prior to being examined, the witness named
in the foregoing deposition, KHANH NGUYEN, was by me duly
sworn to testify the truth, the whole truth, and nothing
but the truth.

That said deposition was taken down by me in
shorthand at the time and place therein named and
thereafter transcribed under my direction, and I hereby
certify that the foregoing deposition is a true and
correct transcript of my shorthand notes so taken.

I certify that a request has been made by, or on
behalf of, the witness to review, correct and sign the
transcript of these proceedings.

I further certify that I am neither counsel for
nor related to any party to said action nor in anywise
interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed
my name this 9th day of July, 2015.

JAN M. ROPER, RPR, CSR NO. 5705

EXHIBIT J

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

AFROU NIKMANESH, ELVIS)
ATENCIO, ANNA NGUYEN, AND)
EFFIE SPENTOS, on behalf of)
themselves, the general)
public, and all others)
similarly situated,)
)
 Plaintiffs,)
)
 vs.) CASE NO.
) 8:15-cv-00202-AG-JCG
WAL-MART STORES, INC., a)
Delaware corporation, and)
WAL-MART ASSOCIATES, INC., a)
Delaware corporation, and)
DOES 1 through 10,)
inclusive,)
)
 Defendants.)

)

DEPOSITION OF MONICA THAO TRINH
LOS ANGELES, CALIFORNIA
SATURDAY, JULY 11, 2015

DORIEN SAITO, CSR 12568, CLR

1 Q. Are you considered a floater?

2 A. Yeah.

3 Q. Yeah.

4 A. Uh-huh.

5 Q. Are you full-time?

6 A. I'm part-time status, but I've been working
7 full-time. If I -- I mean, ever since the
8 reinstatement, I've been picking up pretty much
9 full-time, forty hours a week, so -- but I -- I mean,
10 that's depending on the needs of the market and if I
11 want to pick up those shifts.

12 Q. So to some extent, you have control over your
13 own schedule?

14 A. Yes. Uh-huh. Uh-huh.

15 Q. Now, as a floater, are there times that you
16 have worked, let's say, less than thirty hours a week?

17 A. Not yet, but -- not yet.

18 Q. Do you know if other floaters occasionally work
19 less than thirty hours a week?

20 A. Probably.

21 Q. But you don't know one way or the other?

22 A. I don't know. I don't know, yeah. I would say
23 yes because there's people who just work one day a week
24 or --

25 Q. So some part-time or floater pharmacists --

1 MR. EPSTEIN: Monica, try not to say "uh-huh"
2 or "huh-uh" because it's hard for the reporter to figure
3 out which one it is that --

4 THE WITNESS: Okay.

5 MR. EPSTEIN: Yes or no.

6 THE WITNESS: Okay.

7 BY MR. GRAY:

8 Q. It is a little difficult. Everybody struggles
9 with it, and I struggle with it too. But certainly if
10 you can try to say "yes" or --

11 A. Okay.

12 Q. -- "no," that would be good.

13 A. Okay.

14 Q. And to your knowledge, Ms. Dabney's authority
15 was limited to Market 70; is that correct?

16 A. Yes.

17 Q. So to your knowledge, she didn't oversee any
18 stores outside of Orange County; is that correct?

19 A. Yes.

20 Q. Do you know who she reported to?

21 A. Ami Bhatt. That's the regional.

22 Q. Regional director; is that correct?

23 A. Uh-huh.

24 Q. And her last name is spelled B-h- --

25 A. B-h-a-t-t.

1 required?

2 A. Can you please repeat that.

3 Q. Sure.

4 Do you recall any email from Joanne or the
5 materials that were included with those emails that told
6 you that the APhA course was mandatory?

7 A. Yes.

8 Q. Okay. And how many of those emails or
9 materials did you receive?

10 A. I would say six.

11 Q. Okay. So roughly six of the twelve or so
12 emails that you received from Joanne Ordoñez indicated
13 that the course was mandatory; is that correct?

14 A. Yes.

15 Q. And did she say that -- excuse me.

16 Was it the emails that said that, or was it the
17 materials included with the email that's said that?

18 A. The emails says it's required. If you need --
19 if you were be certified, it's required to take the
20 course, the APhA course.

21 Q. If you want to be certified; is that correct?

22 A. If you want to be certified.

23 Q. Right.

24 Okay. Was there anything in those emails that
25 said you had to become certified?

1 that every store in Market 70 had at least one
2 pharmacist who had become already immunization
3 certified?

4 A. By March 2014.

5 Q. Okay. And you're not aware whether every --
6 literally every pharmacist within Market 70 at some
7 point became immunization certified; is that correct?

8 A. Can you repeat that again.

9 Q. You're not aware whether every single
10 pharmacist within Market 70 has become immunization
11 certified at this time?

12 A. As of March -- March?

13 Q. No. No. At this point, present day.

14 A. Oh, okay. Present day, right now, today.

15 Q. Yes.

16 A. I'm aware that every store has a pharmacist
17 certified in Market 70.

18 Q. Okay.

19 A. But every pharmacist, every store? I don't
20 know that.

21 Q. Okay. That was my question?

22 A. Okay.

23 Q. So just to be clear.

24 A. Okay.

25 Q. You're not aware right now if every single

1 pharmacist within Market 70 is immunization certified;
2 is that correct?

3 A. That is correct. But my guess --

4 Q. Okay.

5 A. -- is the majority are. Very few are not.
6 Maybe a couple.

7 Q. Okay. But you don't know one way or the other
8 and how many are?

9 A. Not exactly --

10 Q. Okay.

11 A. -- numbers, yeah.

12 Q. Do you know anybody who is not immunization
13 certified?

14 A. I don't.

15 Q. Okay. Are you familiar with the immunization
16 certification of any pharmacist in markets outside of
17 Market 70?

18 A. What do I know about --

19 Q. Are you -- well, let me put it this way.

20 Do you know one way or the other if any
21 pharmacist outside of Market 70 is immunization
22 certified?

23 A. Yes.

24 Q. Okay. And in which markets do you know
25 pharmacists who either are or are not immunization

1 certified?

2 A. Market 207.

3 Q. Okay. Any other markets?

4 A. I don't know any other markets.

5 Q. Okay. And within Market 207 as you sit here
6 today, are you aware one way or the other whether every
7 single pharmacist within that market is immunization
8 certified?

9 A. I'm not aware. If those are the exact words
10 you're saying, every pharmacist, no, I'm not aware.

11 Q. Okay. So do you have any knowledge one way or
12 the other if any pharmacist outside of Market 70 or
13 Market 207 is immunization certified?

14 A. That are immunization certified?

15 Q. Either they are or are not immunization
16 certified.

17 A. I know those that are.

18 Q. And how many pharmacists do you know outside of
19 Market 70 or Market 207 that are certified?

20 A. Let me count the stores that I've been to.

21 I've probably been to thirteen, fourteen
22 stores. And all of them give immunizations. Market 207
23 and then the other market neighborhood, I don't know.

24 MR. EPSTEIN: I think that --

25 MR. GRAY: Okay.

1 A. Uh-huh.

2 Q. And those two additional markets, Neal's market
3 and Cooper's market, those are markets in California; is
4 that correct?

5 A. Correct.

6 Q. So you're not familiar with any pharmacists in
7 markets outside of California; is that correct?

8 A. That's correct.

9 Q. Okay. Are you familiar with any pharmacists
10 within Northern California?

11 A. That works for Wal-Mart?

12 Q. Correct.

13 A. No.

14 Q. Okay. Now, the emails that we talked about a
15 little bit earlier from Mary -- MaryAnn and Ms. Ordoñez,
16 the emails that you received prior to taking the APhA
17 course, do you still have those emails?

18 A. I don't because when I -- when I switched
19 markets, it was wiped out.

20 Q. Okay. So you never saved any of those emails
21 to a personal computer or anything like that?

22 A. I didn't.

23 Q. Did you receive continuing education credits
24 for taking the APhA course?

25 A. Yes.

1 immunization certification?

2 A. No, there's not -- it's -- the paid tool kit
3 will tell you how to get certified.

4 Q. Okay.

5 A. But --

6 Q. Is there anything in the paid tool kit, to in
7 your knowledge, that says whether immunization
8 certification is required for existing Wal-Mart
9 pharmacists?

10 A. No.

11 Q. Did you receive the paid tool kit prior to
12 taking the APhA course?

13 A. Home study or -- I know it's available. Yes.
14 Yes.

15 Q. Okay. So had -- let me put it this way.

16 Had you seen the paid tool kit prior to taking
17 the APhA course?

18 A. It was available.

19 Q. Did you review it prior to taking the APhA
20 course?

21 A. It was pretty long, so I glanced through it,
22 but I didn't go through it thoroughly --

23 Q. Okay.

24 A. -- until after my -- my courses.

25 Q. Okay. Was there anything in the paid tool kit

1 Q. Okay.

2 A. -- how they're communicating it to their
3 pharmacists.

4 Q. But you didn't actually receive any of the
5 communications to the pharmacists in those markets, did
6 you?

7 A. No.

8 Q. Okay. So you don't have any personal knowledge
9 of what the market directors in any other markets
10 besides Market 70, 207, and the two additional markets
11 that we discussed regarding the APhA course; is that
12 correct?

13 A. Right.

14 Q. And prior to taking the APhA course, you were
15 never told that you would be terminated if you did not
16 take the course; is that correct?

17 A. That's correct.

18 Q. And prior to taking the APhA course, you were
19 never told by anybody at Wal-Mart that you would be
20 given reduced hours if you chose not to become
21 immunization certified; is that correct?

22 A. No, they never told me that.

23 Q. Okay. And you were never told by anybody with
24 Wal-Mart that you would be transferred stores if you
25 chose not to become immunization certified; is that

1 correct?

2 A. Not in those words. Not directly in those
3 words. But I would have -- I would think that if I
4 wasn't certified, my store's numbers would go down. I
5 would have lower profits, and they would find someone to
6 replace me. They would try -- they would -- they would
7 find a reason to transfer me or replace me, to have
8 some -- to put somebody in there --

9 Q. Okay.

10 A. -- that was certified.

11 Q. And you formulated that belief on your own? In
12 other words, nobody told you that; is that correct?

13 A. Nobody told me that.

14 If I was -- as I said, if I was a manager and I
15 wasn't producing for my store, that would make me look
16 really bad. I would like I wasn't a team player or a
17 good pharmacy manager.

18 Q. Did anybody tell you that if you didn't become
19 immunization certified, that you would not be viewed
20 favorably by Wal-Mart?

21 A. They wouldn't say that.

22 Q. Okay. And nobody did say that; is that --

23 A. Nobody --

24 Q. -- correct?

25 A. -- did say that. That is kind of understood.

1 paid for the home study portion, that didn't change your
2 belief as to whether it was voluntary; is that correct?

3 A. It didn't change my belief, no.

4 Q. Now, we talked a minute ago about certain job
5 postings for staff pharmacists and pharmacy managers.

6 Do you recall seeing any of those before you
7 took the APhA course?

8 A. No.

9 Q. Were you ever told by anybody at Wal-Mart that
10 you would be given priority hours if you took the
11 immunization certification course?

12 A. No.

13 Q. Have you ever had any conversations with any
14 Sam's Club pharmacists about immunization certification?

15 A. No.

16 Q. Have you ever had any conversations with
17 anybody at Wal-Mart about the relationship, if any,
18 between immunization certification and Medicare ratings?

19 A. Medicare ratings?

20 Q. Uh-huh.

21 You don't recall any conversation like that?

22 A. No, I don't.

23 Q. And you're aware that Wal-Mart pharmacists can
24 become APhA certified through other courses other than
25 Wal-Mart's APhA course; is that correct?

1 CERTIFICATE OF REPORTER

2 I, DORIEN SAITO, CSR 12568, CLR, a certified
3 Shorthand reporter in and for the State of
4 California, County of Los Angeles, do hereby certify;

5 That MONICA THAO TRINH, the witness named in
6 the foregoing deposition, was, before the commencement
7 of the deposition, duly administered an oath in
8 accordance with CCP 2094;

9 That said deposition was taken down in
10 stenograph writing by me and thereafter transcribed
11 Into typewriting under my direction.

12 That before completion of the deposition,
13 review of the transcript [X] was [] was not requested.
14 If requested any changes made by the deponent (and
15 provided to the reporter) during the period allowed are
16 appended hereto.

17 I further certify that I am neither counsel for
18 nor related to any party to said action, nor in any way
19 interested in the outcome thereof.

20 Dated this 12th day of July, 2015.

21

22

23

CERTIFIED SHORTHAND REPORTER

24

IN AND FOR THE COUNTY OF
LOS ANGELES, STATE OF CALIFORNIA

25

153

EXHIBIT K

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

AFROUZ NIKMANESH, ELVIS) CASE NO.:
ATENCIO, ANNA NGUYEN, AND) 8:15-cv-00202-AG-JCG
EFFIE SPENTZOS, on behalf of)
themselves, the general)
public, and all others)
similarly situated,)
)
Plaintiffs,)
)
vs.)
)
WAL-MART STORES, INC., a)
Delaware corporation, and)
WAL-MART ASSOCIATES, INC., a)
Delaware corporation, and)
DOES 1 through 10, inclusive,)
)
Defendants.)
_____)

DEPOSITION OF KHAWALA ABUELHIJA
Monday, July 13, 2015
Los Angeles, California

Reported By:
Jan M. Roper, RPR,
CSR No. 5705
File No.: 150713JR

1 Q. Let me ask it this way: Do you have a --
2 currently do you have a schedule of hours that you
3 typically work in a given week?

4 A. Yeah. My main scheduled hours are the weekends,
5 Saturday and Sunday.

6 Q. And for how long have you had that schedule?

7 A. Since I moved from Santa Clarita. So let's say
8 2006 to maybe around 2010. Sometimes I pick up extra
9 shifts if available now.

10 Q. How often do you pick up extra shifts?

11 A. There's no set ratio. I just -- when they need
12 me, if I'm available and my husband's available, I pick
13 up the shift.

14 Q. Do you recall, ever since you came to the Irvine
15 store, having worked more than four days in a week?

16 A. Yeah -- yes.

17 Q. But your typical schedule is either two or three
18 days a week; is that correct?

19 A. Mainly two days a week.

20 Q. And that's been true since about 2010?

21 A. Yes.

22 Q. When you first came to the Irvine location, do
23 you recall who your direct supervisor was at that point?

24 A. Yeah. Alex Nikmanesh.

25 Q. Do you recall what her title was at that time?

1 either one-on-one or over the phone with any regional
2 director other than Anthony Chung or Ami Bhatt?

3 A. No.

4 Q. Have you ever exchanged any e-mails with anybody
5 other than Mr. Chung or Ms. Bhatt at the regional
6 director level?

7 A. Not that I recall, no.

8 Q. Do you know the names of any regional directors
9 other than Mr. Chung or Ms. Bhatt?

10 A. I don't.

11 Q. Do you know the names of any divisional
12 directors other than the one that you mentioned for your
13 division?

14 A. I don't.

15 Q. So you've never had any communication of any
16 type with any divisional director; is that correct?

17 A. Correct.

18 Q. And it's your understanding that Ms. Dabney's
19 supervision is limited to Market 70; is that correct?

20 A. That's my understanding, yes.

21 Q. And it's your understanding that Ms. Fisher had
22 supervision over two markets for some period of time; is
23 that correct?

24 A. Correct.

25 Q. But her -- it's your understanding that her

1 supervision was limited to those two markets for that
2 time; is that correct?

3 A. I assume. I'm not sure.

4 Q. You don't know one way or the other?

5 A. Not really. I'm not sure.

6 Q. Is it your understanding that Mr. Dukes, when he
7 was the market director for Market 70, that his
8 supervision was limited to that market as well?

9 A. That's my understanding.

10 Q. I think you mentioned Khoi Le. How do you know
11 Mr. Le?

12 A. He recently been to -- at San Clemente. I think
13 he took over for a while, but I believe now he's back in
14 Los Angeles. I saw him, actually -- I'm sorry. I saw
15 him also in the training course, in the live training.

16 Q. Okay. Other than at the live training course,
17 have you ever spoken to Mr. Le either on the phone or in
18 one-on-one conversation?

19 A. No.

20 Q. Have you ever exchanged any e-mails with Mr. Le
21 other than those that might have been sent to other
22 pharmacists?

23 A. No.

24 Q. So now we're going to talk a little bit more
25 about APhA immunization certification.

1 of the notes was through e-mail; is that correct?

2 A. Correct.

3 Q. Okay. But you weren't actually on the
4 conference calls; correct?

5 A. Correct.

6 Q. So the forms of communication that you received
7 that suggested to you that you had to become
8 immunization-certified were e-mails from Ms. Dabney,
9 including those that contained conference call notes, and
10 your conversation with Audrey; is that correct?

11 A. Correct.

12 Q. Okay. Is there anything else that indicated to
13 you in any way that you had to become immunization-
14 certified?

15 A. No.

16 Q. And you're not aware of any written Wal-Mart
17 document that says specifically that the course is
18 mandatory or that you have to become immunization-
19 certified; is that correct?

20 A. Correct.

21 Q. And are you aware of any document that you
22 believe constitutes any Wal-Mart policy suggesting or
23 indicating that pharmacists were required to become
24 immunization-certified?

25 A. Correct, I'm not aware.

1 Q. And you're not aware of any communications
2 regarding whether immunization certification was required
3 for pharmacists in any markets outside of your market; is
4 that correct?

5 A. Correct.

6 Q. Now, since the time that you took the APhA
7 course, have you spoken to any pharmacists outside of
8 your market about immunizations or immunization
9 certification?

10 A. I spoke to Sahba -- but she wasn't in our
11 market -- regarding the fact that we didn't get paid.
12 She was in our market, San Clemente store. Now they're
13 not in our market. But just to the fact that, you know,
14 we did not get paid for the course, which we all didn't.

15 Q. I'm sorry. What was her name?

16 A. Sahba.

17 Q. How do you spell that?

18 A. S-a-h-b-a.

19 Q. Okay. Do you know her last name?

20 A. Christiansen.

21 Q. Okay. And when did you have that conversation
22 with Ms. Christiansen?

23 A. After we took the live seminar together.
24 Because we went to the seminar -- or the training
25 together. So it was in October after I found out from

1 Ms. Dabney that we're not going to get paid.

2 Q. So either in very late October 2014 or very
3 early November --

4 A. Or November.

5 Q. -- 2014?

6 A. Correct.

7 Q. And do you recall any details of that
8 conversation with Ms. Christiansen?

9 A. No. Just that we didn't get paid.

10 Q. So you were just sort of complaining to one
11 another? Is that a fair characterization of the
12 conversation?

13 A. Yes.

14 Q. Okay. Did you ask her in any way whether she
15 felt that she had to become immunization-certified?

16 A. I didn't.

17 Q. Did she tell you that she believed that she had
18 to take the training course?

19 A. We never talked. It didn't come up.

20 Q. So you've never talked to any other pharmacists
21 who indicated that they believed that they had to take
22 the training course?

23 A. Correct.

24 Q. Okay. And nobody from Wal-Mart ever indicated
25 to you that if you did not take the APhA course, that you

1 would be terminated; is that correct?

2 A. Correct.

3 Q. And nobody from Wal-Mart indicated to you that
4 if you did not become immunization-certified, that you
5 would receive reduced hours; is that correct?

6 A. Correct. It was just my understanding if I
7 don't get certified, I might lose my shifts, if I don't
8 meet the goal of two shots per day, because I'm the only
9 pharmacist there.

10 Q. Right. So that was your understanding, but
11 nobody told you that; is that correct?

12 A. Correct.

13 Q. Did anybody from Wal-Mart tell you that if you
14 did not become immunization-certified, that you would be
15 transferred to a different store?

16 A. No.

17 Q. Did anybody from Wal-Mart tell you that if you
18 did not take the immunization certification course, that
19 any of your other working conditions would be affected in
20 any way?

21 A. No.

22 Q. Now, I think we talked earlier about continuing
23 education credits.

24 Do you know how many credits you received for
25 participating in the certification course?

1 A. Yes. 20 hours.

2 Q. And as a pharmacist in California, are you
3 required to obtain a certain number of CE credits in a
4 given period?

5 A. Yes.

6 Q. And how many total hours are you required to
7 obtain during that period?

8 A. We need 30 hours in 2 years.

9 Q. Okay. And when is your specific deadline for
10 that two-year period?

11 A. July 21 of 2014, when I had to get my license.

12 Q. It was July 2014; is that right?

13 A. Correct. Yeah, 2014. July 21, 2014.

14 Q. Okay. And so there's another deadline in July
15 2016; is that correct?

16 A. Correct.

17 Q. So the 20 hours that you received for the APhA
18 course fell into the current period of time; is that
19 correct?

20 A. Right. Correct.

21 Q. For the July 2016 deadline; right?

22 A. Correct.

23 Q. And at that point in October 2014, do you recall
24 if you had done any CE hours for this current period?

25 A. I don't recall, but the period just started

REPORTER'S CERTIFICATE

I, Jan M. Roper, a Certified Shorthand Reporter
No. 5705, do hereby certify:

That, prior to being examined, the witness named
in the foregoing deposition, KHAWALA ABUELHIJA, was by me
duly sworn to testify the truth, the whole truth, and
nothing but the truth.

That said deposition was taken down by me in
shorthand at the time and place therein named and
thereafter transcribed under my direction, and I hereby
certify that the foregoing deposition is a true and
correct transcript of my shorthand notes so taken.

I certify that a request has been made by, or on
behalf of, the witness to review, correct and sign the
transcript of these proceedings.

I further certify that I am neither counsel for
nor related to any party to said action nor in anywise
interested in the outcome thereof.

IN WITNESS WHEREOF, I have hereunto subscribed
my name this 13th day of July, 2015.

JAN M. ROPER, RPR, CSR NO. 5705